Supreme Court, U.S.
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No. 09-1350 MAY 3 - 2010

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In The

Supreme Court of the United States

CRISELL SEGUIN,

Petitioner,

v.

KEN A. CUCCINELLI, Attorney General
for the Commonwealth of Virginia, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Virginia

PETITION FOR WRIT OF CERTIORARI

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**Petitioner*

QUESTIONS PRESENTED

The underlying case deals primarily with the attempt of an employer to use the justice system to force an employee to arbitrate defamation claims against her will, but then, during appeal and mandamus, issues of constitutionality and judicial discretion arose.

1. Is mandamus an appropriate remedy when: 1) a state circuit court judge deprives a plaintiff, without writing an opinion, of a demanded jury trial and a stay (with material facts in dispute and no proven waiver), to determine the existence of a proposed arbitration contract, ignoring state and federal statutes, case law, and state supreme court rules, effectively usurping power from both Legislatures; and when 2) a state supreme court refused jurisdiction on appeal due to an arbitration order's interlocutory designation while refusing two requests for stay pending certiorari?

2. Is it gross neglect, thus a usurpation of power, for the Virginia Supreme Court to ignore a trial court's inaction regarding violations of Virginia Code § 8.01-271.1, after multiple notifications, where the statute includes: "the court . . . *SHALL* impose . . . an appropriate sanction . . . " (emphasis added), especially when both courts were fully aware of activity requiring action pursuant to this statute?

QUESTIONS PRESENTED – Continued

3. Is the manner, as described herein, regarding the implementation of several sections of Virginia Code § 17.1-600 through 629 that apply to the assessment of costs in Virginia Supreme Court proceedings unconstitutional, and are the statutes themselves unconstitutional?

4. Federal Public Policy favors arbitration and encourages all legal authorities to implement arbitration aggressively. As an apparent issue of first impression, is it a violation of that same Federal Public Policy for an employer to force acceptance of an arbitration proposal after unilaterally incorporating it into required company procedures?

LIST OF PARTIES

Petitioner:	Crisell Seguin, pro se Plaintiff and Appellant Below
Respondents:	Ken Cuccinelli, Esq., Attorney General, Commonwealth of Virginia Mandamus Respondent Below
Co-Respondent:	Robert F. McDonnell, Governor, Commonwealth of Virginia
Co-Respondent:	Northrop Grumman Systems Corporation, and John C. Gage Defendants and Appellees Below

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION:

5th Amendment

> " . . . nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

14th Amendment

> " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

UNITED STATES CODE:

9 U.S.C. § 16 appears at App. 13

9 U.S.C. § 16(a)(1)(A)

28 U.S.C. § 1651(a) (All Writs Act)

> "(a) The Supreme Court and all courts established by an Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

CONSTITUTION OF VIRGINIA:

Article 1 § 11

> "Due process of law . . . – That no person shall be deprived of his life, liberty, or property without due process of law; . . . "

VIRGINIA CODE:

§ 1-248 appears at pages 31 and 32

> "Supremacy of federal and state law. – The Constitution and laws of the United States and of the Commonwealth shall be supreme. Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the

Constitution and laws of the United States or of the Commonwealth."

OTHER:

American Rule

"A prevailing party generally cannot recover attorneys' fees from the losing party."

ATTORNEY GENERAL OPINIONS:

AG Op., 87-88 Va. 64

"Due process must be satisfied prior to the imposition of sanctions."

JURISDICTION

If it please the Court, jurisdiction is being invoked here pursuant to 28 U.S.C. § 1257(a) and 28 U.S.C. § 2403(b) in that this certiorari was initiated after final judgment in the highest court of a state – the Virginia Supreme Court. As an alternative, if neither of the above is acceptable, petitioner would pray that the Court invoke the All Writs Act, 28 U.S.C. § 1651(a) to obtain jurisdiction of the case.

STATEMENT OF THE CASE

The validity of a set of Virginia statutes is being drawn into question as being repugnant to the Constitutions and laws of Virginia and of the United States, and three highly impacting issues, having

national import, are humbly brought to this Court's attention.

This case was originally initiated by the filing of a defamation suit in Fairfax County Circuit Court, Virginia in May of 2007 involving the petitioner (Crisell Seguin) and co-respondent (her employer) Northrop Grumman Systems Corporation and John C. Gage, her manager regarding the petitioner's 2006 performance review. Soon thereafter, the employer filed motions to compel arbitration claiming that they had a contract with the petitioner to resolve all employment disputes through third party arbitration instead of in a court of law.

The respondent denies that there has ever existed a legitimate contract to arbitrate and that she never agreed (neither implicitly nor explicitly) with the employer's proposals to arbitrate any claims she may have.

At a hearing to resolve this dispute, the trial court judge utilized summary judgment, based upon pleadings filed and testimony of both counsel, to order the parties to arbitration. The respondent objected, having demanded jury trial, and initiated steps to appeal the decision to the Virginia Supreme Court (VSC) in early 2008.

More than a year later after significant pleadings and briefs had been filed, and oral presentations, the VSC denied the petitioner's appeal holding that it had no jurisdiction according to Commonwealth law

due to the interlocutory condition of the appealed order.

Thereupon, some months after, in the late spring of 2009, the respondent proceeded to file a petition for a writ of mandamus with the Supreme Court of Virginia against the trial court judge who made the order, asserting that he had no authority to perform summary judgment under the circumstances. An assistant attorney general was assigned by the Commonwealth to represent the judge.

After almost a year of various litigant filings, the VSC ruled that mandamus cannot lie where any other avenue of relief is available and that it was also not a substitute for an appeal. The respondent then timely appealed to this Court.

REASONS FOR GRANTING THE PETITION

The petitioner apologizes for presenting multiple questions (4), but they all have national importance and tend to show how impacting the influence of arbitration has become in this country.

I will address each question separately with a short introduction to each:

1. **Is mandamus an appropriate remedy when: 1) a state circuit court judge deprives a plaintiff, without writing an opinion, of a demanded jury trial and a stay (with material facts in dispute and no proven waiver), to determine the existence of a proposed arbitration contract, ignoring state and federal statutes, case law, and state supreme court rules, effectively usurping power from both Legislatures; and when 2) a state supreme court refused jurisdiction on appeal due to an arbitration order's interlocutory designation while refusing two requests for stay pending certiorari?**

As more and more large corporations implement arbitration as their preferred procedure to resolve most employee disputes; the more those organizations complicate the lives of their employees, most of whom have never heard of the topic of arbitration before, unless it was associated with union disputes. This creates an overwhelmingly biased atmosphere in the workplace for employees who are unknowingly being thrust deeply into a quasi-judicial system without a choice since many, if not most, have probably never even had the occasion to speak to an attorney, nor have ever read a legal document at this point in their lives.

The average employee probably has inadequate training, no experience, and little or no knowledge regarding this very complicated issue. In many cases, the employee does not even know that he is being

forced to accept arbitration as a substitute for litigation since few of them probably consulted with a lawyer regarding the employment agreement they are required to sign. Many do not even have the time to read the complicated procedures the company dictates that they follow in their day-to-day work activities, until the arbitration issue is thrust upon them when they, or the company, attempt to resolve a disagreement. Then, WHAM, what a surprise most will have. Many employees simply are not aware of the quick sand that awaits them as one can see in my case. Many may not be able to even understand the explanations of their counsel and have to rely totally upon someone they do not really know that well. And sometimes, as in my case, their counsel withdraws, leaving them stranded.

This arbitration situation has now risen to a national level and recently has had the attention of the U.S. Congress in the form of the Franken Amendment, but that only helps defense sector employees. We need much more help from our Government in general to place this issue on a level playing field so that it can be more fair and less biased.

I hope through this action I can do my part to assist in that effort. No citizen of these United States should ever have to go through what I am experiencing. I have found no attorney (out of more than 100) who will challenge a county judge, a supreme court, an attorney general, and a state, so I am attempting to go it alone, on both my principles and the need for both equity and justice. I know I will

make mistakes along this path that I have chosen, but please forgive me. I will try my best and my intentions will be constructive.

I ask for the Court's consideration and leniency, relating to my lack of knowledge and experience in these matters, and my pro se status based upon *Haines v. Kerner,* 404 U.S. 519 (1972), which states " . . . the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers . . . ".

The employer has contended in other courts, and will likely ask this court to entertain the same theory of defense, that the employee engaged the arbitration process when she first objected to her manager's defaming statements, harassment and other adverse treatments, by her filing letter complaints about her boss's various behaviors.

In fact, as long as she has been an employee of this specific corporation (almost ten years, having received her twenty year reward recently for total service to, and including, taken-over companies) it has had a grievance process distinctly separate and apart from its arbitration activities. A process which is referred to as informal resolution and management review.

Specifically, that separate process treats complaints by management differently from other employee complaints, and has even explicitly declared management personnel exempt from arbitration. The employee's previous company was absorbed into her

present employer's company taking her along with it as a manager, and she continued being promoted as such until the defendant manager below succeeded by unjustified means to demote her.

In fact, she was improperly demoted from management by him on June 27, 2007 based upon the alleged defaming statements he supported in her 2006 review, which was after she filed her defamation complaint with a court of law. In actuality then, she was still exempt from arbitration at the time she filed her case due to her continual and contiguous management status for over ten years.

Throughout this case, the employer has concealed the fact, that as a manager, this employee was exempt from arbitration (App. 24). As can be seen, from the first formal implementation, managers were exempt.

Material facts have overtly been in dispute from the very beginning of this case. When the employee filed her complaint in a court of law instead of filing a demand for arbitration, she was in essence announcing that she did not feel there was a valid contract in place to arbitrate. (App. 15). This alone is the most material fact in dispute, outside of the issues related to defamation, but the employee also provided a list of other facts in dispute in the appendix of her mandamus petition.

In addition to filing her original case in a court of law instead of demanding arbitration, the employee filed a response in opposition to the employer's

motion to compel arbitration with the trial court, and simply by doing so, was confirming that she had not agreed to any contract to arbitrate regardless of its form or date, or how it was instigated.

The trial court judge who held the hearing regarding the motion to compel arbitration explicitly asked the parties if any material facts were in dispute. Both parties indicated on the transcribed record that material facts were in dispute (App. 28, P.7, L.5). To confirm the employer's position on this subject, there is no evidence in the record which shows that the employer ever contested its transcribed statements relating to material facts being in dispute, which in essence admits that there are such.

It is well established here that summary judgment was not appropriate.

The petitioner filed a Petition for Writ of Mandamus with the Virginia Supreme Court (VSC) on June 15, 2009 (App. 17) which was originally denied on October 21, 2009 (App. 1) after several defensive and other pleadings were filed. She then filed a timely Petition for Rehearing on November 2, 2009 (App. 17) which was eventually denied on February 1, 2010 (App. 9 and 17). Whereupon, the petitioner then timely filed her writ of certiorari with this Court on May 3, 2010.

The petitioner's primary reason for filing the petition for writ of mandamus included a request for the VSC to order the trial court to provide a jury trial regarding the existence of an arbitration contract

between her and her employer since material facts were in dispute (App. 28, P.7, L.5), a jury trial had been demanded in her original defamation suit filed on May 24, 2007, and no explicit jury trial waiver had been proven by the employer. A secondary request included a stay of the proceedings which her counsel had requested during the hearing but was sternly denied by the trial judge (App. 31, L.16).

After the employee filed her defamation complaint, the employer filed a motion on July 16, 2007 to compel arbitration followed up by memoranda in support thereof on October 9, 2007 (App. 33), and then filed corrected and enhanced memoranda in further support thereof on October 25, 2007. The trial judge then compelled the parties to arbitration (App. 7) at a hearing held on October 26, 2007.

A court's judgment in a mandamus action is in large part a matter of discretion with the court to which the petition is addressed in *Schlagenhauf v. Holder*, 379 U.S. 104, 112 n.8 (1964). A mandamus court must determine if the particular act complained of is mandated, justified, and whether it meets several other criteria. As Justice Black stated in concurrence: "Where there are extraordinary circumstances, mandamus may be used to review an interlocutory order which is by no means "final" and thus appealable under federal statutes."; *Will v. United States,* 389 U.S. 90 (1967), and further, " . . . the granting of mandamus may bring about the review of a case as would an appeal.".

This case justified mandamus below because it truly has a set of extraordinary circumstances in that several statutes, rules and cases have been ignored, as well as constitutional rights. A trial judge seems to have blatantly ignored state law, rules of the Virginia Supreme Court (VSC), and Virginia case law; all in refusing to allow the petitioner her day in court. And then the VSC seemingly ignored both federal law and cases which, if implemented, would have provided a full and proper appeal for the petitioner, according to federal law. Then the VSC seems to have ignored not only all of that, but inappropriate behavior by the defendant as well who concealed material evidence from both courts and submitted false evidence and false declarations to boot, all while filing truthful pleadings with a Federal District Court in Maryland five days earlier; *Nadine Batchelor v. Northrop Grumman*, WMN-07-1031 (App. 41). That case also contested whether a valid arbitration contract existed or not between an employee and the company.

This is just the kind of circumstance the mandamus is appropriate for, truly extraordinary: " . . . to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so."; *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943).

One of the criteria used to determine if mandamus is justified includes whether the law, as specified by either statute or rule (regardless as to whether by state or federal requirements) is either: 1) not being implemented properly, or 2) is being

ignored by the court complained of. If no violations are identified, then mandamus cannot lie. In the instant case, violations seem to abound.

Another major criteria for determining whether mandamus lies is whether the petitioner has any other recourse reasonably available which could be pursued as in *Kerr v. United States District Court*, 426 U.S. 394 (1976), which states: " . . . the party seeking this largely discretionary writ must show that there are no other adequate means to secure the desired relief.".

The VSC's unpublished order for her mandamus contained the opinion: "mandamus does not lie to compel a discretionary act and is not a substitute for appeal." (App. 1). I will address each topic separately.

"*Substitute for appeal*". The petitioner attempted an appeal prior to filing the mandamus (*Seguin v. Northrop Grumman Systems Corp., et al.*, 277 Va. 244, 247, 672 S.E.2d 877 (2009), but the VSC denied it due to jurisdictional (interlocutory) reasons. The petitioner then motioned for two separate, but consecutive, stays pending certiorari, but the VSC denied both of them as well. Petitioner's counsel then resigned before the appeal mandate issued primarily due to his lack of desire to file a rehearing, so the petitioner filed one herself, but to no avail. The petitioner searched far and wide for a replacement attorney without success. She did not feel qualified at the time to generate and sustain a post-VSC appeal,

losing that opportunity through no fault of her own. That was almost two years ago before the Petitioner gained her current level of knowledge which is allowing her to barely produce this certiorari. Even if an appeal had gone forward, it is doubtful that it would have been accepted because the federal courts would have to rule on a state decision, which they of course do not like to do. The only option would have been a certiorari like this one which she could not have handled. Therefore, she really had no viable appeal option, especially since Virginia does not support appeals of non-final orders.

In addition, when she asked the VSC in re-hearing to consider both applicable federal statutes (App. 13), and federal case law, the court chose not to do that as well. Near the end of the appeal, the VSC also denied two separate requests for stays pending certiorari leading the petitioner to believe that it would not support an appeal of any type, so the petitioner, discouraged, wrote and submitted the mandamus.

If a litigant uses the VSC logic (nothing to be done criteria) and Virginia law, the order would still be interlocutory because VAC § 8.01-581.16 (App. 12) does not support appeal without a stay, but 9 U.S.C. § 16(a)(1)(A) (App. 13) does, if a stay is refused. Again, the VSC could have awarded the missing stay and taken jurisdiction, but it did not probably due to its strict "finality" rule.

Contrary to the VSC, federal case law in *Green Tree Financial Corp.-Ala. v. Randolph,* 531 U.S. 79 (2000) supports appeal of an interlocutory order, and explains why the VSC logic of nothing to be done is not a roadblock to appeal.

Therefore, the petitioner respectfully disagrees with the VSC's approach in that it could have added the stay to the order (since the trial court judge denied one) and taken jurisdiction over the appeal, or at least such would have given sanction for me to proceed to another appeal level. Again, respectfully, they could have taken the same approach in the mandamus, as I had asked them to use federal law. but they chose not to do so there either.

In that vein, I believe that VAC § 8.01-581.16, which is part of Virginia's Arbitration Act (VAA) suite of statutes, violates federal law due to its deficiency of preventing an interlocutory order compelling arbitration without a stay, from qualifying for appeal. This apparent deficiency is not limited to just Virginia due to the influential and nationally accepted Uniform Arbitration Act's (UAA) guidelines and model statutes which do not, as of its last approved and published guidelines for states dated in 2000, support appeal of interlocutory orders. The UAA meets and publishes its guidance every ten years and may be scheduled to reconvene this year, at which point it may change that position. I personally believe that is why the VSC will not change.

"*Discretionary*". How can a discretionary act continue to be so if all required criteria become satisfied? In this case, if the trial judge had added the stay as requested at hearing, the employer could have appealed under VAC § 8.01.581.16(2) if it so desired. Otherwise, the employee's ability is at least inhibited, if not actually biased, in that, if she had gone to arbitration and obtained a ruling that no contract existed, she wasted that time and effort. Or, if when she came back, she could have requested a jury trial on the existence issue, she would have still wasted arbitration. Since mandamus is discretionary, then why not determine if a contract really exists in the first place and enhance the judicial process in doing so?

The petitioner respectfully believes that because the trial judge had the opportunity to potentially shorten the judicial cycle significantly through contract existence determination by jury trial early on, but chose not to, effectively ignoring applicable laws, and since he apparently ignored both state and federal rules of law and case guidance as well, by denying a stay, he abused his discretion beyond the reasonableness standard (apparent ignorance of multiple laws and multiple cases) and stepped into the realm of usurpation of legislative power, violating the separation of powers laws, doctrine and the constitutions of both Virginia and the United States. As this court said in *Bankers Life & Cas. Co. v.*

Holland, 346 U.S. 379 (1953), " . . . he exceeded his legal powers and this error ousted him of jurisdiction.". The court went on to say: "Congress must have realized that in the course of judicial decision some interlocutory orders might be erroneous. The supplementary review power conferred on the courts by Congress in the All Writs Act is meant to be used only in the exceptional case where there is clear abuse of discretion or "usurpation of judicial power" of the sort held to justify the writ in *De Beers Consolidated Mines v. United States,* 325 U.S. 212, 217 (1945)." Maybe this case is a good example.

The petitioner also believes that the VSC is not innocent in these dealings.

Therefore, there is a "clear and indisputable" right here to warrant mandamus, given these egregious refusals to obey the laws and refusals to exercise duty as in *In Re: Ralston Purina Co.*, 726 F.2d 1002 (4th Cir. 1984).

The petitioner attempted her best, through both appeal and mandamus, to convince the VSC to come to a proper conclusion, to no avail. She now truly understands what a daunting task the mandamus is. It is no wonder more than 100 attorneys turned the opportunity down. It has now taken three years just to get through the preliminaries in her long defamation battle.

2. Is it gross neglect, thus a usurpation of power, for the Virginia Supreme Court to ignore a trial court's inaction regarding violations of Virginia Code § 8.01-271.1, after multiple notifications, where the statute includes: "the court . . . *SHALL* impose . . . an appropriate sanction . . . " (emphasis added), especially when both courts were fully aware of activity requiring action pursuant to this statute?

This issue is particularly poignant when litigants bring ethics issues to judges who may then use technical details of the system to ignore, or inadequately address, the circumstance. When statutes and rules state that something "SHALL" be accomplished, there is no wiggle room. Such a dictate should not be ignored without consequence. The doctrine is well known and practiced, even in the civilian arena, and certainly in biblical terms. If nothing else, if other counsel see what some are able to circumscribe, they too may move closer to that disciplinary line. Eventually then, the system finds itself in array, sometimes experiencing dramatic effects to square itself again, and sometimes it is incapable of doing so which can seriously erode the public's confidence in our system of justice and its caretakers. That disarray is precisely what I would like to help prevent by raising this question. It is not that any one individual may have bad intentions, everyone makes mistakes and we all get too busy, but some do not wish to admit those mistakes. I do not know the exact motives of those who have misrepresented the facts and who

have misbehaved in this case, but they must be called upon to reconcile their transgressions and provide examples of the ability of the system to regulate itself without external intervention.

The employer filed four pleadings in October, 2007 in preparation for the October 26 hearing on their motion to compel arbitration. Two versions of the motion to compel and two versions of a motion to crave oyer. The second version of each document contained corrections which had been submitted in the first versions. It was learned after the hearing that they had not corrected all of their errors so the Petitioner wrote an ex parte letter to the trial court judge notifying him of this fact.

The trial court judge did nothing for almost two months so the petitioner, pro se at that time, contacted the employer's hearing attorneys to determine if they were going to correct the rest of their errors, one of which was a declaration by an employer's HR manager (App. 49) testifying that the petitioner had received certain documents at her home which constituted the proposed arbitration contract, which in fact the petitioner did not receive and has provided the employer with an affidavit to that effect. The employer's attorneys indicated that they were not going to make any more corrections since we were by that time on appeal to the VSC. Then shortly thereafter on January 21, 2008, the trial court wrote a letter to both parties (App. 23) indicating that he had not read the information which the petitioner had provided to him regarding the pleadings in error.

The record on appeal was transmitted on January 24, 2008 by the clerk of the county where the hearing had occurred. That record contained two large manila envelopes which contained the petitioner's ex parte communications to the trial court; one of the envelopes was sealed by the court. This was verified by the petitioner personally by reviewing the record on appeal in the VSC clerk's office. At a later date, it was apparent that someone at the VSC had broken the seal and opened both envelopes indicating that the evidence inside had been seen by VSC personnel.

At that point, the petitioner had obtained an appeal attorney who proceeded to file the required pleadings. The petitioner in the meantime tried every way that she could to get her employer to listen to her regarding the false evidence made by the employer's attorneys and false declarations made by the HR employee. The petitioner wrote formal ethics reports, informal complaints and even notified the Virginia State Bar regarding the attorneys filing pleadings in the lower court containing false evidence and false declarations. She even contacted the private attorney of the Chief Justice of the Virginia Supreme Court at one point. All to no avail.

Finally, she decided to write to the president and CEO and its chief operating officer of her employer to notify them that company attorneys were about to intentionally file false pleadings with the VSC. The very next filing contained an admission to the VSC that errors were present (App. 46).

Without the ability to publish company internal copies of the actual proposed arbitration contract because they were also corporate procedures, the petitioner began looking to find other employer legal cases around the country so as to find a public copy she could show as evidence of the employer's false pleadings. She found one in Baltimore County, Maryland. She then presented this material to her appeal attorney who would not submit it to the VSC.

By this time, the appeal had almost completely run its course in that the VSC's opinion had just been published and the petitioner asked her appeal attorney if he would file a request for rehearing. When he refused, she filed one herself, pro se. Apparently, the VSC ignored the corroborating evidence and notice of false pleadings both at appeal and below, because they denied her rehearing request ending the VSC appeal taking no action.

The petitioner diligently and exhaustively looked for three months for an attorney who would help her, without success. She talked to over 100 attorney's, or their offices, in multiple surrounding states and D.C. Unable to find an attorney who would help her, she decided to file a petition for a writ of mandamus with the VSC in hopes that it would provide the attention and exposure that the trial court's order to compel arbitration needed to expose these perpetrations. The VSC turned down all of the petitioner's various attempts to obtain relief. Whereupon, the petitioner now requests relief from this revered body.

Samples of one of the most significant errors in the employer's pleadings is a page number on the first page of the proposed arbitration contract (App. 39) submitted to the trial court, and of course, promulgated up through to the VSC in the appeal record.

During the mandamus, the petitioner attempted several ways to bring these issues to the attention of the VSC, including a motion for rule to show cause in an attempt to convince the trial judge to admit his knowledge of the subject (App. 2), as well as a motion to disqualify his counsel (App. 2). Obviously, if the trial judge did not know of the errors pre-mandamus, the petitioner informed him completely in her filings within that forum.

One might reasonably ask, what's the problem? Since the employer has put forth a copy of its proposed arbitration contract backed up by a sworn declaration (in, at least, four separate documents), in its very first pleadings to the trial court almost three years ago, essentially everything they have done or said since has no probative value and should be disregarded completely allowing the petitioner to proceed to trial as she has demanded.

Specifically, with a page number on the first page of "1 of 31" (App. 39), but with the employer only submitting 14 pages in the section numbering "2 of 14" through "14 of 14", there is a serious issue regarding what content may be missing. Even after their admission of errors in their opposition on appeal pleading footnote (App. 46), they have never corrected,

nor even attempted to correct, the associated declaration. Even to this day, that declaration is still false. They should never have submitted such seriously erred documents in the first place, but even so, after the many notifications they should have corrected them. It is not known why they still will not correct them today. I can only speculate that 5th Amendment rights may be involved.

In an effort to come to the truth of the matter, and prove that the submission of the errored pleadings may have been either intentional, or submitted through gross neglect, in opposition to their explanation of "computer error" in their footnote, the petitioner used the newest version of the employer's proposal (March 2010) in an attempt to duplicate the 1 of 31 page error. After many, many tries she was able to replicate the error. She has proved that it was an operator error, NOT a computer error as they describe in their VSC pleading (App. 46). It has to do with the way the operator sets up their computer display screen within the word processor when they print the procedure. Apparently, either the employer personnel who supplied the document to the attorneys committed the operator error, or the attorney's own personnel created the operator error. The "machine" DID NOT make the error, a human did. Did they know this when they published their admission and intentionally described it as a computer error instead of human error?

In March and early April of the current year, 2010, the petitioner went looking for a public version

of the 2006 proposed contract. This time she found what she needed in a Federal District Case in Baltimore City (App. 41) showing "page 1 of 14". Surprisingly, the filings in that court occurred five days before the same proposed arbitration contract was submitted to the subject trial judge in this case in October 2007. Even more surprising, to the point of astonishment, was that the SAME attorney, James J. Kelley, is listed as the lead attorney in both cases (App. 36, 42). How could he possibly not have known what he submitted in two different courts within five days of each other?

I motioned the VSC for a rule to show cause during the mandamus just for the reasons which have now been proven beyond a reasonable doubt that sanctionable activity has occurred. Specifically, the employer's attorneys submitted false evidence and false declarations multiple times without attempting to correct them. I am asking this court to rule whether Virginia Code § 8.01-271.1 should have been used to sanction the employer's attorneys, by both the trial court judge and the VSC.

The referenced statute states in part:

> *Virginia Code § 8.01-271.1. Signing of pleadings, motions, and other paper; oral motions; sanction. – Except as otherwise provided in §§ 16.1-260 and 63.2-1901, every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record . . .*

> *The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is* ***well grounded in fact*** *and is* ***warranted by existing law or a good faith argument*** *for the extension, modification, or reversal of existing law, (iii)* ***it is not interposed for any improper purpose****, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . .*
>
> *If a pleading, motion, or other paper is signed or made in violation of this rule,* ***the court, upon motion or upon its own initiative, shall impose*** *upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred . . . including a reasonable attorney's fee.* (emphasis added).

This statute requires that the "court . . . SHALL impose . . . sanction". It is clear both the trial court and VSC were fully aware of the false evidence and false declarations, and that the order was based upon this false evidence, especially after the VSC was notified by the trial court judge and after the rule to show cause.

It is clear that the Virginia Legislature created this powerful legal tool to allow courts to discipline misbehaved litigants, in addition to other purposes. It

did not say "at the discretion of the court", it said SHALL if a violation occurs, the only discretion allowed is the type and amount of punishment, and that it should fit the transgressions. The court is even allowed to criminalize the punishment if it so desires, depending upon whether the sanction is dependent upon some action to occur, or simply a fixed punishment.

It is clear that the employer's attorneys signed their pleadings and submitted them. They were responsible for the content and they did not make the corrections necessary to rectify their errors. This created an aggravated circumstance.

3. Is the manner, as described herein, regarding the implementation of several sections of Virginia Code § 17.1-600 through 629 that apply to the assessment of costs in Virginia Supreme Court proceedings unconstitutional, and are some of the statutes themselves unconstitutional?

One of the most surprising events in my ordeal so far has been the severe disappointment I felt when the Virginia Supreme Court assessed me $50 unexpectedly, without notice or recourse. I was simply stunned and numb, literally for days. I did not know what I had done wrong and they would not tell me. Eventually, a deputy clerk attempted to express some of the reasons for their action in a letter by sharing with me two state statutes which he implements at the Court's order. How is it that a clerk has to explain

the actions of such a revered and noble body? My thoughts were that it must either be mundane or such a small detail that the issue did not rise to the level of using their efforts to assist or to help me. The more I read the applicable statutes, the more I felt like I had been singled out for punishment, like a child, unable to understand, thus preventing corrective action and increasing the risk of repeating whatever the mistake was. So far, I have been deprived of understanding by the Court's silence on the subject. I asked multiple times in multiple ways without response. How can a citizen become a better citizen if one does not know, and worse, cannot find out, the parameters which dictate performance? This leads to speculation and arbitrary actions, neither of which is acceptable in a legal setting. Facts must prevail and actions must be consistent. Coupled with these issues is the ambiguous circumstance created when one statute says one thing and another counters the first without explanation or instructions for implementation; in addition to being nebulous regarding which one takes precedence. This also is untenable, especially when coupled with what appears to be discrimination of application, again without explanation. Due to the importance I associate with receiving such discipline, I dedicated many hours to reviewing mandates attempting to understand. What I found, again, was truly surprising. There appears to be no published rationale related to the differences in applying the statutes between cases. The assessment amount is simply listed on the mandate, and that amount varies by

some undeterminable formula. Not that there may be a reasonable or rational explanation, but one cannot be discerned from the results of the Court's actions listed on its mandates in this regard. This could likely affect many courts of various levels and types across the country. Any Legislature which statutorily modifies the American Rule must do so fairly and dictate openness in application in order to maximize the public's welfare and confidence.

When the VSC dismissed the petitioner's mandamus on October 21, 2009 (App. 1) it ordered that "respondent . . . recover of the petitioner his costs by him expended about his defense herein", and further it stated on the face of the order "Respondent's costs: . . . Attorney's fee $50.00". I believe the assessment of that fee is contrary to law and is unconstitutional as implemented.

After receiving the order and after speaking with a deputy in the VSC clerk's office, I decided that it would be best to pay the fee with objections (including with it my feelings of duress) and then address the issue at a later time. My understanding was that if I did not pay the assessment that I might be subject to additional charges, including contempt. Unable to obtain advice from any counsel, I took the VSC's advice in *Robertson v. Commonwealth*, 181 Va. 520, 25 S.E.2d 352 (1943), which states: "The proper method of challenging the correctness of an adverse ruling is by an appeal and not by disobedience."; accord *Brougham v. Oceanic Steam Navigation Co.*, C.C.A.

2,205 F. 857, and *Oddo v. Saibin*, 106 N.J. Eq. 453, 153 A. 289.

I obeyed the Court's order by paying the assessment and then filed a document with the VSC entitled; *Petitioner's Notice of Assessment Payment with Objections* dated December 2, 2009. I then received a letter from the Court's deputy clerk (App. 21) informing me that the clerk's office was holding my objections document for two weeks to give me time to think about it, instead of filing it immediately as my cover letter to the clerk had asked.

The clerk's letter contained, among other information, two statutes which the clerk indicated that they use to carry out the VSC's cost assessment orders, indicating that the assessment was a "tax" not a "sanction".

Just prior to filing the notice of payment document, I had called the Office of the Attorney General (AG) of Virginia, as the clerk of the court suggested that I do, to determine who to make the check to and where to send it. The response I received was to make the trial judge the payee, but send it to the AG. Then I received a letter (App. 19) from the assistant AG who was the attorney of record for the trial judge in the mandamus action. He informed me that the Commonwealth was the proper payee and returned my check payable to the trial judge in his letter. I wrote a new check to the Commonwealth of Virginia (App. 20), and as can be seen, the AG designated the check to be deposited to the "Treasurer of Virginia/

Office of the Attorney General", which I assume is a Commonwealth general revenue account. I then wrote and filed my *Petitioner's Motion for Reconsideration of Assessment* on December 12, 2009 to the VSC which was more detailed than the objection document and contained a reference to the previous *Payment Notice* described above. The motion contained several topics including challenges to the VSC's assessment in relation to both Virginia and federal law, and expressed what I believed to be unconstitutional issues associated with the VSC's assessment and process.

The issue I am the most concerned with is my due process rights. I did not have an opportunity to explain myself or confront my accuser before the cost was applied. Not having been noticed also prevented me from confronting my accuser as in *Bloom v. Illinois,* 391 U.S. 94 (1968) stating that: "This Court has heretofore held that various provisions of the Bill of Rights such as . . . the right to counsel and to confrontation under the Sixth Amendment . . . ". I was not notified of the law being applied, and if the assessment is truly a "tax" I was not afforded the proper rights normally associated with taxation.

How can a single amount ($50.00) as stated by VAC § 17.1-624 (App. 11) be appropriate for all litigants? Shouldn't a tax be proportionate and based upon something of value? I was not aware that the VSC was designated a taxing authority as described in *Marshall v. Northern Va. Transp. Authority,* 275 Va. 419, 657 S.E.2d 71 (2008).

As the chart shows (App. 51), most cases have been charged only $30, and I found many others that were not mandamus who were charged that amount also, such as *Urdu Times, Inc. v. Hameedi,* 01 Va. S. Ct. UNP 011067 (2001).

I did not even know whether I had the right to object to the cost or not, but I shared my concerns with the VSC anyway feeling that I had a basic right to respond, with due respect. I felt like the cost was a sanction and that the AG's opinion (OP., 87-88 Va. AG64) was apropos, that due process should have been served similar to the contempt statute VAC § 8.01-271.1.

Most importantly though, was the taking of property by the state without due process. The $50.00 was part of my property before I had to relinquish it under duress. I believe this violates VAC § 1-248, which states: "The Constitution and laws of the United States and of the Commonwealth shall be supreme. Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth." I also feel that this action and assessment violates my 5th and 14th Amendment rights of the U.S. Constitution, as well as the equal protection clause. I have learned that the 7th Amendment does not apply to states, so I will not invoke that right to trial here.

I have utilized both Virginia and federal references. There are likely to be several probable conflicts identifiable between Commonwealth and U.S. law regarding this issue. Based upon VAC § 1-248 and *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984), which states: " . . . state law is still pre-empted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law", and in *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 142-143 (1963), where that state law stands as an obstacle to the accomplishment of the full purposes and objective of Congress, *Hines v. Davidowitz,* 312 U.S. 52, 67 (1941)." If there exists a conflict, or if one develops, then federal law takes precedence, as for example; where the 14th Amendment overrides inherent power to summarily punish."

I believe the approach used to assess these costs upon me were akin to summary punishment. In *Sacher v. United States*, 343 U.S. 1 (1952), this Court defined summary punishment as: "Summary does not mean time, it means shorten process", in addition this Court said: "Summary punishment always, and rightly, is regarded with disfavor . . . ".

The VSC has explained its position as to just who should be assessed with this cost several times in the last century, including *Ficklen v. City of Danville,* 146 Va. 426, 131 S.E. 689 (1926) that: "Section 3528 (17.1-604 predecessor) of the Code of 1919 provides in mandatory terms that, in every case in an appellate court, costs shall be recovered by the ***party substantially***

prevailing." (explanation and emphasis added). This descriptive term is nebulous, in that, it can mean something different to one person than it does to another, and even worse, one person may legitimately change their definition from one circumstance to another and still be within the broad definition of the term.

This causes confusion and legitimate differing opinions. For instance, even though this term is sometimes meant to encapsulate a theory regarding success on the merits, one may not necessarily prevail on every issue raised. More confusing are the issues of how many justices voted in the case, how many dissented, and who actually decides success in the appeals courts.

The VSC continued in *Ficklen*, supra, by saying; "Section 3528 of the Code of Virginia provides in mandatory terms that . . . ". This re-enforces VAC § 17.1-604 and states the prevalent position this particular statute takes compared to the other statutes in the section, since none of the exceptions or modifications in the other statutes are discussed.

The 4th Federal Circuit has recently provided in *In Re: Cresent City Estates*, ___ F.3d ___ 082367 (4th Cir. 2009); "In other words, if Congress wishes to overcome either premise underlying the American Rule, it must express its intent to do so clearly and directly." And further it has said: "And '[I]n order to abrogate a common-law principle, the statute must 'speak directly' to the question addressed by the

common law.", accord *United States v. Texas*, 507 U.S. 529, 534 (1993). And finally: "Because fee-shifting statutes are 'in derogation of the common law,' courts are obligated to construe them strictly", accord *Rowe v. U.S. Fid. & Guar. Co.*, 375 F.2d 215, 219 (4th Cir. 1967).

If construed strictly, the exact meaning of these statutes, when combined, is neither clear nor direct, since they contradict each other. This also causes ambiguity and promotes abuse of discretion in their application as can be seen in the chart I prepared (App. 51) to exemplify my contentions. As can be seen by the ?, 0, $30, and $50 in the amount assessed column, these laws do not seem to have been applied consistently, especially when comparing the difference in amounts between the cases, which I believe is discriminatory, unlawful and an abuse of discretion to the point of usurpation of the Virginia General Assembly's powers. Such an application is also repugnant to both laws and constitutions of the Commonwealth and U.S. and is unconscionable since "no reasonable person in their right mind would devise such an unfair scheme, nor apply it in this way".

As such, this violates the separation of powers doctrine and Article I, § 11 of the Virginia Constitution, in that one branch of government may not perform functions of another branch of government at the same time. By utilizing conflicting law, and by applying that law in an unexplained manner, the VSC appears to encroach upon the Legislature, given

the situation represented by the data in the chart, and how the VSC handled my costs.

I also take exception to the seemingly discriminatory act of exempting the Commonwealth from assessment as in VAC § 17.1-629 (App. 12), which the chart depicts clearly occurs. Since the monies assessed seem to be deposited to a general revenue account of the attorney general, it looks like this process could be described as more of a revenue generating option rather than a remedial measure since the $50 is not representative of what a reasonable person would expect attorney's fees to be. There is no reasonable correlation between the benefit conferred and the cost exacted as in *Fairfax County Water Authority v. City of Falls Church,* 19 Cir. L200816114 (2010).

Reasonable persons may legitimately disagree, but in this circumstance, there can be no reasonable disagreement that either the laws themselves, and/or the application of those laws creates confusion, discrimination, lack of clarity, uncertainty as to objective, lack of fairness as to implementation, and causes unconscionability and repugnancy, and may constitute egregious, unequal treatment under the law.

Therefore, at least VAC § 17.1-600 (App. 10) (due to "penal; discretion"), VAC § 17.1-604 (App. 10) (due to "party substantially prevailing"), VAC § 17.1-609 (App. 10) (due to "court may give or refuse costs, at its discretion", and VAC § 17.1-629 (App. 12) (due to "Commonwealth; exception") statutes would seem to be constitutionally null and void.

Last, but not least, is the issue of mootness. I believe that since the trial court judge made an order based upon false pleadings, and he grossly violated several laws, his order was invalid. Consequently, it was moot when it was presented to the VSC for mandamus, and therefore, exempt from the assessment of fees since there would have been no prevailing party at that point had it been declared moot.

4. Federal Public Policy favors arbitration and encourages all legal authorities to implement arbitration aggressively. As an apparent issue of first impression, is it a violation of that same Federal Public Policy for an employer to force acceptance of an arbitration proposal after unilaterally incorporating it into required company procedures?

My employer unilaterally implemented its forced arbitration program in 2002 by creating and adding new company procedures to the plethora of other employee requirements. Even though I was a manager at the time, both years before and years after this implementation, and exempt from the procedure, I was not fully cognizant of the program since I had never needed to understand it until 2007 when a disagreement with my manager occurred.

I had been aware of some of the company communications regarding the procedures, but they never rose to the level which required me to be knowledgeable, nor were they specifically brought to

my attention by any person, prior to filing. The procedure was also put forward to employees with a cover memo from the Corporate HR Director (App. 37) which explained several details of its application, but seems to have conveniently left out several important details which might alert or alarm some employees if they had that information.

There was no formal training (and still is none) provided and no specific knowledge was expected of employees regarding the program (even its existence) with the exception of an annual certification that each employee must sign indicating that they had conformed to all company practices, procedures and policies during the year and would promptly report any ethics or other violations appropriately.

Embedded within the annual certification is a statement which requires the employee to answer "YES" or the system would not report that compliance had occurred. For the last three years since filing my defamation complaint, I have not signed the certification mainly due to the arbitration requirement being embedded. For not doing so, I am under great pressure from the company to sign the certification and accept the arbitration procedure as a contract, and there is an atmosphere of harassment and the implied threat of termination if I do not comply.

I truly believe that the reason I have not been terminated before now is that I have maintained this legal action which might reflect adversely as retaliation if I were to be let go during the interim.

This situation should be illegal in a country which promotes itself as a strong supporter of basic and advanced human rights. It is simply atrocious and must be addressed and I believe that my actions are a good start to rectifying the situation if not at least make it prominently known to all citizens who are employees throughout the country.

Employees should not be forced to arbitrate against their will nor be under threat that termination will occur otherwise. This is truly a national problem. Virtually all government contractors, and many others, use similar or the same techniques because neither the courts nor Congress has stepped up yet to stop it.

Specifically, is it against the Federal Public Policy favoring arbitration to go so far as to adversely influence, force or even coerce employees, in any way, to accept company procedures which would otherwise be (and rightfully should be) a stand-alone agreement independent from all other company procedures?

CONCLUSION

As the evidence above clearly shows, summary judgment by the trial judge was totally inappropriate under the circumstances of this case. It has also been shown that several actions taken by the Virginia Supreme Court should be critically reviewed.

I pray that this Court declare VAC § 8.01-581.16 inconsistent with federal law and that until the Virginia Legislature takes steps to bring it into compliance, Virginia courts should use applicable Federal Laws.

I pray that this Court order both the VSC and the trial court to appropriately interpret applicable rules and laws and provide a trial to determine the existence of a contract.

I pray that this Court strike all of the employer's false pleadings filed to-date and that the employer be prevented from taking any adverse action against me again in any way.

I pray that this Court reinstate my employment status to the position it was prior to the 2006 false performance review and order immediate restitution of any and all lost pay and other benefits.

I pray that this Court order that appropriate sanction hearings be held and those found to be perpetrators be properly punished.

I pray that this Court order that all my fees and costs be repaid to me.

I pray that this Court declare VAC § 17.1-600 *et seq.* unconstitutional and that until those laws are properly repaired by the Virginia Legislature that any that would have caused assessment be held at bay until the costs laws are properly amended.

I pray this Court provide any other relief it deems appropriate.

Respectfully submitted,

CRISELL SEGUIN, pro se*
15015 Kamputa Dr.
Centreville, Va. 20120-1450
(703) 851-6174
**Petitioner*

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 21st *day of* October, 2009.

In Re: Crisell Seguin, Petitioner

Record No. 090981

Upon a Petition for a Writ of Mandamus

On consideration of this case, the Court is of the opinion that mandamus does not lie to compel a discretionary act and is not a substitute for appeal. It is therefore ordered that the said petition be dismissed, the rule be discharged and that respondent Dennis J. Smith, Judge, recover of the petitioner his costs by him expended about his defense herein.

Upon further consideration whereof, the "motion to intervene and leave to file their motion to dismiss" filed by co-respondents Northrop Grumman Systems Corporation and John C. Gage, is denied.

Respondent's costs:

Attorney's fee $50.00

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Ebby Edwards
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 29th *day of* January, 2010.

In Re: Crisell Seguin, Petitioner

Record No. 090981

Upon a Petition for a Writ of Mandamus

Upon consideration of the pleadings filed herein, the Court denies petitioner's "motion for reconsideration of assessment and notice of assessment payment with objections," "motion to disqualify respondent's counsel and to apply sanctions," and "motion for a rule to show cause."

A Copy,

Teste:

/s/ Patricia L. Harrington, Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday *the* 10th *day of* December, 2009.

In Re: Crisell Seguin, Petitioner

Record No. 090981

Upon a Petition for Rehearing

On November 24, 2009 came the petitioner, in proper person, and filed a motion to supplement her petition for rehearing in this case.

Upon consideration whereof, the Court grants the motion and the supplement is considered filed.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Douglas B. Robelen
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 17th *day of* July, 2009.

In Re: Crisell Seguin, Petitioner

Record No. 090981

Upon a Petition for a Writ of Mandamus

On June 15, 2009 came the petitioner, in proper person, and filed a pleading entitled "leave to file a consolidated cross-motion to strike respondent's and co-respondent's motions to dismiss." On June 19, 2009 came again the petitioner and filed a pleading entitled "leave to file an error correction to a consolidated cross-motion to strike respondent's and co-respondent's motions to dismiss." Thereafter, on June 22, 2009, came respondent Judge Dennis J. Smith, by the Attorney General of Virginia, and filed his response to the petitioner's June 15, 2009 pleading. On June 25, 2009, came again the petitioner and filed a pleading seeking leave to reply to the respondent's June 22, 2009 pleading.

Upon consideration whereof, the Court denies the relief requested by the petitioner in the above-referenced pleadings.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Douglas B. Robelen
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 22nd *day of* May, 2009.

Crisell Seguin, Appellant,

against Record No. 080217
Circuit Court No. CL-2007-0005843

Northrop Grumman Systems Corporation, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Fairfax County.

For reasons stated in writing and filed with the record, the Court is of opinion that the order that compelled the parties to arbitrate their dispute in this case was not an appealable order and, therefore, this Court does not have jurisdiction to review the merits of appellant's contentions. Accordingly, the appeal is dismissed without prejudice.

This order shall be certified to the said circuit court.

A Copy,

Teste:

/s/ Patricia L. Harrington
Clerk

VIRGINIA:

IN THE CIRCUIT COURT
FOR FAIRFAX COUNTY

CRISELL SEGUIN,	)	
Plaintiff,	)	
	)	
v.	)	
	)	**CL-2007-5843**
NORTHROP GRUMMAN SYSTEMS CORPORATION, ET AL.,	)	
	)	
Defendants.	)	

ORDER

This matter having come on pursuant to defendants' motion to compel arbitration, and

The Court having heard argument and reviewed the memoranda of law submitted by the parties,

IT IS HEREBY ORDERED that defendants' motion to compel arbitration is ~~DENIED~~. [GRANTED /s/ DJS]

10/26/07 /s/ Dennis J. Smith
Date Circuit Court Judge

~~I ASK FOR THIS:~~
[SEEN AND
EXCEPTED TO
for reasons stated
in the Court and in
Memoranda of law
/s/ JLG]

/s/ Jack L. Gould
Jack L. Gould, Esquire
Counsel for Plaintiff
[VSB – 17521]

~~SIGN AND~~ _____
[I Ask For This:
/s/ KEG]

/s/ Karen E. Gray
James J. Kelley, Esquire
Karen E. Gray, Esquire
Counsel for Defendants
[VSB – 47747]

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday *the* 1st *day of* February, 2010.

In Re: Crisell Seguin, Petitioner

Record No. 090981

Upon a Petition for Rehearing

On consideration of the petition of the petitioner to set aside the judgment rendered herein on the 21st day of October, 2009 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Lesley K. David
Deputy Clerk

Code of Virginia

§ 17.1-600. Laws of costs not penal; discretion of courts of equity.

The laws of costs shall not be interpreted as penal laws; nor shall anything in this chapter take away or abridge the discretion of a court of equity over the subject of costs, except as provided in § 17.1-604.

(Code 1950, § 14-174; 1964, c. 386, § 14.1-177; 1998, c. 872.)

---

§ 17.1-604. Costs in appellate courts.

In every case in the Supreme Court or the Court of Appeals, costs shall be recovered in such court by the party substantially prevailing.

(Code 1950, § 14-178; 1964, c. 386, § 14.1-181; 1971, Ex. Sess., c. 156; 1988, c. 525; 1998, c. 872.)

---

§ 17.1-609. Costs on certain motions and interlocutory orders.

Upon any motion, other than for a judgment for money, or upon any interlocutory order or proceeding, the court may give or refuse costs, at its discretion, unless otherwise provided. It may, when a demurrer is sustained to a plea in abatement, give judgment for the plaintiff for his full costs, to the time of sustaining it, an attorney's fee only excepted; and when any other part of the pleading is adjudged insufficient,

order all costs occasioned by such insufficient pleading to be paid by him who committed the fault.

(Code 1950, § 14-184; 1964, c. 386, § 14.1-187; 1998, c. 872.)

---

§ 17.1-624. Who to tax costs; what included for attorney's fee.

The clerk of the court wherein any party recovers costs shall tax the same. He shall include therein for the fee of such party's attorney, if he has one:

1. In a case of the Commonwealth, if no higher fee is allowed ..... $ 5.00
2. In a chancery cause other than a motion, when the matter in controversy exceeds $100 in amount or value ..... $ 15.00
3. In the Court of Appeals ..... $ 50.00
4. In the Supreme Court ..... $ 50.00

In no case shall more than one fee be taxed against the same party, unless the court otherwise directs.

(Code 1950, § 14-193; 1952, c. 616; 1954, c. 99; 1964, c. 386, § 14.1-196; 1984, c. 703; 1998, c. 872.)

---

§ 17.1-628. Judgment or decree for costs on behalf of Commonwealth; costs to be paid into state treasury. – In a case wherein there is judgment or decree on behalf of the Commonwealth for costs, there shall be taxed in the costs the charge actually

incurred to give any notice, although it be more than fifty cents; and the fees of attorneys and other officers for services, and allowances for attendance, as if such fees and allowances were payable out of the state treasury. What is so taxed for fees of, or allowance to, any person, shall be paid by the sheriff or officer who may receive such costs into the state treasury. (Code 1950, § 14-196; 1964, c. 386, § 14.1-200; 1998, c. 872.)

---

§ 17.1-629. No judgment for costs against Commonwealth; exception. – In no case, civil or criminal, whether in a court of record or a court not of record, except when otherwise specially provided, shall there be a judgment for costs against the Commonwealth. (Code 1950, § 14-197; 1964, c. 386, § 14.1-201; 1998, c. 872.)

---

§ 8.01-581.016. Appeals. – An appeal may be taken from:

1. An order denying an application to compel arbitration made under § 8.01-581.02;

2. An order granting an application to stay arbitration made under subsection B of § 8.01-581.02;

3. An order confirming or denying an award;

4. An order modifying or correcting an award;

5. An order vacating an award without directing a rehearing; or

6. A judgment or decree entered pursuant to the provisions of this article.

The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (1986, c. 614.)

---

9 U.S.C. § 16 – Appeals

(a) An appeal may be taken from –

(1) an order –

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order –

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

(Added Pub. L. 100-702, title X, Sec. 1019(a), Nov. 19, 1988, 102 Stat. 4670, Sec. 15; renumbered Sec. 16, Pub. L. 101-650, title III, Sec. 325(a)(1), Dec. 1, 1990, 104 Stat, 5120.)

Virginia Courts Case Information
Supreme Court of Virginia
Appeals

Case Information

Case Number: 080217	**Case Type:** CIVIL
Appellant: SEGUIN, CRISELL	**Appellee:** NORTHROP GRUMMAN SYSTEMS CORP.
Second Appellant:	
Lower Court: FAIRFAX COUNTY	
Record Received: 01/24/08	

Petition for Appeal

Petition for Appeal Received: 01/28/08		
Brief in Opposition Received: 02/21/08	**Received:**	**Received:**
Reply Brief Received:		
Certificate of Appeal: 06/12/08		
CSA Oral Argument:		
Disposition Date: 06/12/08	**Disposition:** GRANTED	
Petition for Rehearing Received: 04/25/08		
Petition for Rehearing Date: 06/12/08	**Decision:** GRANTED	

Appeal

Opening Brief Received: 07/22/08		
Appendix Received: 07/22/08		
Appellee Brief Received: 08/20/08	**Received:**	**Received:**
Reply Brief Received: 09/02/08		
Amicus Curiae Received:	**Received:**	
Disposition Date: 02/27/09	**Disposition:** DISMISSED	
Notice of Rehearing Received: 03/06/09		
Petition for Rehearing Received: 03/24/09		
Petition for Rehearing Date: 04/24/09	**Decision:** REFUSED	
Order:	**Opinion:** PUBLISHED	**Pages:** 7

Virginia Courts Case Information
Supreme Court of Virginia
Original Jurisdiction

Case Information

Case Number: 090981	**Case Type:** MANDAMUS
Petitioner: SEGUIN, CRISELL	**Respondent:** IN RE:
Second Petitioner:	
Lower Court: MANDAMUS	
Record Received:	

Original Jurisdiction

Petition Received: 05/15/09	
Response Received: 06/03/09	
Show Cause:	
Disposition Date: 10/21/09	**Disposition:** REFUSED
Petition for Rehearing Received: 11/02/09	
Petition for Rehearing Date: 02/01/10	**Decision:** REFUSED

Original Jurisdiction Docketed

Opening Brief Received:		
Appendix Received:		
Respondent's Brief Received:		
Reply Brief Received:		
Amicus Curiae Received:	**Received:**	
Disposition Date:	**Disposition:**	
Notice of Rehearing Received:		
Petition for Rehearing Received:		
Petition for Rehearing Date:	**Decision:**	
Order:	**Opinion:**	**Pages:**

[SEAL]
COMMONWEALTH of VIRGINIA
Office of the Attorney General

William C. Mims
Attorney General
900 East Main Street
Richmond. Virginia 23219

December 14, 2009

Ms. Crisell Seguin
15015 Kamputa Drive
Centreville, VA 20120-1450

In Re: Crisell Seguin
Record No. 090981

Dear Ms. Seguin:

Thank you for your check in the amount of $50.00 in the referenced matter. The check is being returned because it should be made payable to the "Commonwealth of Virginia" rather than to "Dennis J. Smith, Judge." I have been told that in my absence you were informed to make the check payable to Judge Smith; however, that was incorrect. I apologize for any inconvenience this may cause you.

Should you have any questions, please contact me at 804-786-1586.

Very truly yours,

/s/ Stephen Hall
Stephen M. Hall
Assistant Attorney General

Enclosure

Amount: $50.00
Account: [redacted]
Bank Number:

Sequence Number: 6092849498
Capture Date: 12/28/2009
Check Number: 1725

1725

CRISELL SEGUIN 07-72
16015 KAMPUTA DR.
CENTREVILLE, VA 20120-1450

Date 12/16/09

88-1510 VA
1534

Pay to the order of Commonwealth of Virginia $ 50.00

Fifty and 00/00 Dollars

Bank of America

ACH R/T 051000017

VSC# 09098 Advantage Criselll Seguin

Respondent Attorney's Fe [redacted]

(FOR DEPOSIT ONLY)
Treasurer of Virginia
Office of the Attorney General
WACHOVIA 2001008053807

Bank of America, N.A.
Chantilly
14001 Metrotech Dr
Chantilly, VA 20151

BEST AVAILABLE COPY

[SEAL]
SUPREME COURT OF VIRGINIA
PATRICIA L. HARRINGTON, CLERK
SUPREME COURT BUILDING
100 NORTH 9TH STREET, 5TH FLOOR
RICHMOND, VIRGINIA 23219
(804) 786-2251 V/TDD
FAX: (804) 786-6249

DOUGLAS B. ROBELEN
CHIEF DEPUTY CLERK

December 4, 2009

Ms. Crisell Seguin
15015 Kamputa Drive
Centreville, VA 20120-1450

Re: In Re: Crisell Seguin
Record No. 090981

Dear Ms. Seguin:

This will acknowledge receipt of the "notice of assessment payment and objections" that you filed in connection with the above case. The $50 attorney's fee assessed was not a sanction, but rather a taxed cost. See Code §§ 17.1-604 and 17.1-624. After reviewing these statutes, please advise me whether you still wish to pursue your "objections" with the Court. If I have not heard from you by December 15, I will assume that you do wish the Court to consider your objections.

Please note that if the Court grants your pending petition for rehearing and vacates the dismissal order

that assessed the attorney's fee, then you will have paid the Attorney General unnecessarily.

Sincerely,

/s/ Douglas B. Robelen
Douglas B. Robelen
Chief Deputy Clerk

cc: Hon. Stephen M. Hall (via email)

[SEAL] NINETEENTH JUDICIAL
CIRCUIT OF VIRGINIA

Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009
703-246-2221 • Fax: 703-385-4432 • TDD: 703-352-4139

COUNTY OF FAIRFAX CITY OF FAIRFAX

[Names On Letterhead Omitted In Printing]

January 21, 2008

Ms. Crisell Seguin
15015 Kamputa Drive
Centreville, Virginia 20120

RE: *Seguin v. Northrop Grumman Sys. Corp., et al.*, CL007-5843

Dear Ms. Seguin:

I am in receipt of your correspondence regarding the Motion to Compel Arbitration in the above-referenced matter which was heard by me on October 26, 2007. This is an *ex parte* communication to the court and as such I did not read it and will disregard it. Please make all communications to the court through your attorney, Mr. Jack Gould. I am forwarding copies of your correspondence to both Mr. Gould and Ms. Gray, counsel for Northrop Grumman.

Very sincerely yours,

/s/ Dennis J. Smith
Dennis J. Smith

DJS/cjf

NORTHROP GRUMMAN	CO NO.
CORPORATE PROCEDURE	H103
Subject: DISPUTE RESOLUTION	PAGE 1 of 8
	DATE 29 March 2002
AUTHORIZED DOCUMENTS ARE PUBLISHED ONLINE ONLY. VERIFY ANY COPY AGAINST THE ONLINE SYSTEM BEFORE USE.	SUPERSEDES None
	REVISION New

Process Owner Director of Employee Relations

Purpose This procedure describes Northrop Grumman's dispute resolution process.

Exclusions The dispute resolution process is not available to:

- persons working less than 20 hours per week
- persons working in a temporary capacity
- employees represented by a bargaining unit
- members of management
- foreign nationals living outside of the U S.

Members of management, however, are entitled to an impartial internal, senior management review of issues affecting their employment

	status. Managers should contact the Human Resources department at their company element for assistance in resolving such issues.
General	Northrop Grumman's dispute resolution process provides nonmanagerial employees who have completed their probationary period with a means of recourse when they feel they have not been treated in accordance with company policy. Employees who have signed a Mutual Agreement to Arbitrate Claims are encouraged, but not required, to first try to resolve the issue using the internal dispute resolution procedure. An employee who feels they have not been treated accordingly should meet with their direct report manager immediately and attempt to solve any issue(s) informally before filing a formal complaint. If this attempt fails to resolve the issue(s), the employee should contact the Human Resources department at their company element for advice and assistance in processing a formal complaint to be submitted to the dispute resolution process.

* * *

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

CRISELL SEGUIN,	:	
Plaintiff,	:	
-vs-	:	CL NO. 2007-5843
NORTHROP GRUMMAN SYSTEMS CORP., ET AL,	:	
Defendants.	:	

Circuit Courtroom 5C
Fairfax County Courthouse
Fairfax, Virginia

Friday, October 26, 2007

The above-entitled matter came on to be heard before the HONORABLE DENNIS J. SMITH, Judge, in and for the Circuit Court of Fairfax County, in the Courthouse, Fairfax, Virginia, beginning at 12:05 o'clock a:m.

APPEARANCES:

On Behalf of the Plaintiff:

JACK L. GOULD, ESQUIRE

On Behalf of the Defendant:

KAREN E. GRAY, ESQUIRE

* * *

[Page 6] to proceed under the dispute resolution process.

This was a few months before she actually filed her complaint. So by that point, there's no dispute that she knew about the DRP, that she continued her employment as of that date, thereby accepting the DRP.

Now, in her opposition, Ms. Seguin argues both that she did not accept the DRP, which I think we've just covered, and that there was insufficient consideration for the DRP.

That's taken care of by Virginia law, which says specifically that continued employment can constitute sufficient consideration for agreements, including a non-compete, and in this case it would include an arbitration agreement.

One issue that counsel did raise in the opposition that I want to take care of very quickly is a jurisdictional argument. The parties here, Defendants, are not disputing this Court's personal jurisdiction with regard to the motion to compel arbitration. In fact, we are trying to invoke the Courts jurisdiction to compel arbitration.

So it's not a jurisdictional issue here. We agree that should the Court deny the motion to compel, [Page 7] that it would probably be in this Court. But for all the reasons I've said, the reasons contained in the papers, the Court should grant the motion to compel arbitration and send this to another forum.

[Page 7, Line 5] THE COURT: Are any material facts in dispute as to whether the parties entered into a contract to arbitrate.

MS. GRAY: My understanding from the opposition is that she does dispute that there is a valid contract here, mostly because she says she did not accept the DRP.

THE COURT: Well, then why doesn't the Court retain the authority to determine if a contract and agreement to arbitrate has been reached?

MS. GRAY: The Court does retain that authority, Your Honor. The Court retains the –

THE COURT: So how am I, at this point, making that determination absent a hearing?

I mean, if there's material facts that are in dispute, we resolve that through a hearing, don't we?

MS. GRAY: There are no material facts that are in dispute that are sufficient that it would require a hearing. The Plaintiff agrees that she was aware of the [Page 8] DRP and aware of the DRP prior to filing her lawsuit. The only things she claims is that her silence with regard to that DRP does not constitute acceptance.

THE COURT: So you are saying there are no material facts in dispute, she admits that she knew of it before she filed a lawsuit, and therefore is subject to it.

MS. GRAY: Correct.

THE COURT: Let me hear from Mr. Gould on that.

MR. GOULD: On the specific question you asked, the key material fact in dispute is whether there was mutual assent to this modification to her contract of employment. So that's the key material fact in dispute.

THE COURT: But if she acknowledges that she knew of the arbitration agreement, that she continued to work afterward, isn't that enough to say this gets arbitrated?

MR. GOULD: No. No. I mean, well, first of all, continued employment – her continuing to work, which goes into the considerational argument, is not enough. That's not sufficient consideration. I disagree with counsel that under Virginia law that's sufficient –

[Page 9] THE COURT: Are you saying that if an employer says, "Look, we are changing the rules of how we do things around here, and you have employment at will here, and we are telling you this. If you want to continue to work, you can. But you are going to work subject to these rules," that her continuing to work isn't enough to establish that she comes within that policy of the company.

MR. GOULD: That's what I'm saying.

THE COURT: Give me a case that says that.

MR. GOULD: I'll give you a couple cases, and the first – let me address the Paramount Termite Control case that the defense relies on.

THE COURT: Give me a case that asserts your proposition.

MR. GOULD: All right. Dulaney Foods, which is cited in Paramount, and if you want the citation, let me look at Paramount.

THE COURT: I don't need the citation.

MR. GOULD: In Dulaney Foods, the situation was the employer wanted to sell his manufacturing company –

THE COURT: I do need the spelling, though.

* * *

[Page 18] "You're gone." They can tell her, "Accept this term or leave."

MR. GOULD: They didn't say that. They said –

THE COURT: Well, they specifically did. They said, "By your –

MR. GOULD: No.

THE COURT: – continued employment, you are accepting the terms."

MR. GOULD: That's different from saying, "Either accept it or leave."

THE COURT: It's the flip side of it.

MR. GOULD: It –

[Line 14] THE COURT: Mr. Gould, the motion is granted. The case is going to arbitration.

[Line 16] MR. GOULD: May I ask you, Judge – this will likely be appealed – may I ask for a stay pending the appeal and the conclusion of the appellate proceedings?

THE COURT: You come back after you appeal it and then we will see. But I'm not going to do it under the likelihood – I'm not staying anything on the likelihood of something happening.

MR. GOULD: So once we appeal, we can come [Page 19] back and get a stay if we need to?

THE COURT: You can ask for it.

MR. GOULD: Oh, I understand.

THE COURT: You can ask for it, but I'm not going to – I don't grant motions on the basis that something may happen in the future. When it happens, then I will hear the motion and make a determination, or any judge will hear the motion as to whether it should be stayed.

All right?

MR. GOULD: Thank you, Your Honor.

THE COURT: Thank you.

MS. GRAY: Thank you, Your Honor,

* * *

(Whereupon, at approximately 12:21 o'clock p.m., the hearing in the above-entitled matter was concluded.)

* * *

[Page 20] CERTIFICATE OF REPORTER

I, LISE M. WARMUTH, a Certified Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings which I thereafter reduced to typewriting; that the foregoing is a true record of said proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

/s/ Lise M. Warmuth
LISE M. WARMUTH, CVR
Certified Verbatim Reporter

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

CRISELL SEGUIN, Plaintiff, v. NORTHROP GRUMMAN SYSTEMS CORPORATION, *et al.*, Defendants.	CL-2007-5843 **RESPONSIVE PLEADING**

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR DEMURRER OR, IN THE ALTERNATIVE, MOTION TO COMPEL ARBITRATION

(Filed 2007 Oct – 9 PM 4:15)

Defendants Northrop Grumman Systems Corporation ("Northrop Grumman" or "the Company") and John C. Gage (hereinafter "Defendants"), by and through their undersigned counsel, hereby file this responsive pleading consisting of a Demurrer or, in the Alternative, Motion to Compel Arbitration, to Plaintiff Crisell Seguin's ("Plaintiff") Complaint.

Plaintiff's claims are subject to resolution through mandatory binding arbitration, as set forth

in Northrop Grumman's Dispute Resolution Process ("DRP"), and are not properly brought before this Court. In the alternative, the defamation claims asserted by Plaintiff fail to state a claim on which relief may be granted. As such, Plaintiff's claims should be dismissed with prejudice.

I. Introduction

On a demurrer, the facts alleged in Plaintiff's pleading are accepted as true. *Thompson v. Skate America, Inc.*, 261 Va. 121, 124-25, 540 S.E.2d 123, 124 (2001). Plaintiff is a current employee of a Northrop Grumman subsidiary. Complaint ¶¶ 1, 6. This lawsuit arises out of Plaintiff's employment. Complaint ¶¶ 6-7. Plaintiff's employment is subject to Northrop Grumman's Dispute Resolution Process effective January 30, 2004 as amended and superseded on September 15, 2006.

* * *

Plaintiff asserts that the alleged defamatory statements were communicated to other Northrop Grumman officials, including the General Manager of the Division where Defendant Gage and Plaintiff worked and the Human Resources Group Vice-President. Complaint ¶ 28. Plaintiff has not, and cannot, allege that Defendant Gage communicated the statements with any individual who did not have an interest in the subject or to anyone outside of

Northrop Grumman. Complaint ¶ 23. As the alleged defamatory statements were made to persons of interest and remained within the corporate entity, they were qualifiedly privileged and no publication occurred.[2]

Accordingly, under Virginia law, because there was no alleged publication sufficient to support a cause of action for defamation and Defendants' statements were privileged, Plaintiffs' cause of action for defamation should be dismissed.

III. Conclusion

For the foregoing reasons, Defendants respectfully request that their Demurrer or, in the Alternative, Motion to Compel Arbitration be GRANTED, and Ms. Seguin's claims be DISMISSED WITH PREJUDICE.

---

[2] In addition, even if the allegations could be construed to state a claim for defamation *per se* the statements are privileged because they were made to a party who has a corresponding interest or duty. *Great Coastal Express v. Ellington*, 230 Va. 142, 146-47, 334 S.E.2d 846, 853 (1985).

Dated this 9th day of October, 2007.

Respectfully submitted,

/s/ Karen E. Gray

James J. Kelley (VA Bar No. 13869)
Karen E. Gray (VA Bar No. 47747)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 739-3000
(202) 739-3001 (Fax)
Attorneys for Defendants

* * *

TAB 1

Ian V. Ziskin
Corporate Vice President
Chief Human Resources
and Administrative Officer

NORTHROP GRUMMAN

Northrop Grumman Corporation
1840 Century Park East
Los Angeles, California
90067-2199
Telephone 310-201-3116
Fax 310-556-4519

September 29, 2006

Dear Fellow Employee:

A workforce built on openness, trust and communication is part of our values and is important to each of us. It is my goal to keep you informed of key initiatives and changes.

In February of 2004, the Company established a new Dispute Resolution Process. In doing so, the Company brought together best practices from our heritage companies to create a comprehensive problem-solving process for our employees. Our Dispute Resolution Process has three internal steps (the Informal Process, Administrative Officer Review, Management Appeals Committee) and two external steps (Mediation and Arbitration).

We have undertaken a review of our Dispute Resolution Process. The results of our efforts are found in two revised policies, Dispute Resolution Process (*CO No. H103*) and the Employee Mediation/Binding

Arbitration Program (*CO No. H103A*), copies of which are enclosed. These documents are also available at the Human Resources U& Administration website, along with a Summary of Updates to Dispute Resolution Process, at http://wdd2web.northgrum.com/chra/. Please take time to review both of them carefully.

Like the previous policy, the revised Dispute Resolution Process and the Employee Mediation/ Binding Arbitration Program apply to all employees of Northrop Grumman or any of its subsidiaries, except those employees represented by labor unions, or those employees not covered by U.S. laws. By accepting or continuing employment on or after November 1, 2006, such employees agree, as a condition of continued employment, to submit any covered claims to binding arbitration, instead of having these claims heard by a court or jury. The Company also agrees to submit any covered claims to binding arbitration, instead of having its claims be heard by a court or jury.

If you have any questions about dispute resolution, please direct them to your site Human Resources representative.

/s/ Ian Ziskin
Ian Ziskin
Corporate Vice President
Chief Human Resources and
Administrative Officer

*Recycled Paper

NORTHROP GRUMMAN **CORPORATE PROCEDURE** **Subject:** DISPUTE RESOLUTION PROCESS **AUTHORIZED DOCUMENTS ARE PUBLISHED ONLINE ONLY. VERIFY ANY COPY AGAINST THE ONLINE SYSTEM BEFORE USE.**	**CO NO.** H103 **PAGE** 1 of 31 **DATE** 15 September 2006 **SUPERSEDES** 30 January 2004 **REVISION** General

Overview

Process Owner Director of Employment and Workforce Relations

Purpose This procedure describes Northrop Grumman's Dispute Resolution Process.

Applicable To This Dispute Resolution Process covers all employees of Northrop Grumman, its subsidiaries, and its other affiliated entities, who are employed on or after 1 November 2006, except the following individuals:

- applicants not yet employed
- employees represented by a labor union
- employees not covered by U.S. law

In This Procedure

This procedure contains the following sections:

- Overview
- Covered Claims
- Time Limits for Filing Claims
- Informal Review
- Administrative Officer Review
- Management Appeals Committee
- Mediation/Arbitration – General Information
- Mediation
- Arbitration

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NADINE BATCHELOR, Plaintiff, v. Northrop Grumman, Defendant.	Civil Action No. WMN-07-1032

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant Northrop Grumman[1] ("Defendant") hereby submits this Memorandum of Points and Authorities in Support of its Motion to Dismiss, pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6) and Section 4 of the Federal Arbitration Act, 9 U.S.C. § 4, and moves the Court to dismiss the Complaint against Defendant brought by Nadine Batchelor ("Plaintiff" or "Ms. Batchelor") for lack of subject matter jurisdiction or, in the alternative, for failure to state a claim upon which relief can be granted.

Plaintiff's Complaint should be dismissed in its entirety because Plaintiff agreed at the commencement

[1] Plaintiff improperly named "Northrop Grumman" as Defendant in this case. The proper name of the corporate entity is Northrop Grumman Systems Corporation.

of her employment with Northrop Grumman to mediate/arbitrate any and all claims against Northrop Grumman instead of filing a lawsuit. In her complaint, Plaintiff alleges discrimination and retaliation on the basis of her race, sex, and disability. These claims are within the scope of the parties' arbitration agreement. Plaintiff has not asserted any other claims

* * *

should not be permitted to proceed with her VII or ADA claims. Accordingly, Plaintiff's claims should be dismissed in their entirety.

III. CONCLUSION

For the foregoing reasons, Defendant Northrop Grumman respectfully requests that this Court dismiss Plaintiff's claims against Defendant in their entirety.

Dated: October 4, 2007

/s/

James J. Kelley (Bar No. 06669)
Katherine J. Emig (Bar No. 16839)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
202.739.3000
202.739.3001 (fax)

Counsel for Defendant
Northrop Grumman

* * *

Case 1:07-cv-01032-WMN Document 9-3
Filed 10/04/07 Page 2 of 15

EXHIBIT 2

NORTHROP GRUMMAN	CO NO.
CORPORATE PROCEDURE	H103
Subject: DISPUTE RESOLUTION PROCESS	PAGE 1 of 14
	DATE 15 September 2006
AUTHORIZED DOCUMENTS ARE PUBLISHED ONLINE ONLY. VERIFY ANY COPY AGAINST THE ONLINE SYSTEM BEFORE USE.	SUPERSEDES 30 January 2004
	REVISION General

Overview

Process Owner Director of Employment and Workforce Relations

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Applicable To This Dispute Resolution Process covers all employees of Northrop Grumman, its subsidiaries, and its other affiliated entities, who are employed on or after 1 November 2006, except the following individuals:

- applicants not yet employed
- employees represented by a labor union
- employees not covered by U.S. law

In This Procedure

This procedure contains the following sections:

- Overview
- Covered Claims
- Time Limits for Filing Claims
- Informal Review
- Administrative Officer Review
- Management Appeals Committee
- Mediation/Arbitration – General Information
- Mediation
- Arbitration

Continued on next page

* * *

IN THE SUPREME COURT OF VIRGINIA

Case No. 080217

Crisell Seguin,

Appellant,

v.

Northrop Grumman Systems Corporation, et al.,

Appellees.

NORTHROP GRUMMAN SYSTEMS CORPORATION AND JOHN C. GAGE'S OPPOSITION TO CRISELL SEGUIN'S BRIEF ON APPEAL

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* * *

Statement of Facts

Ms. Seguin is, and at all relevant times has been, an at-will employee of a Northrop Grumman subsidiary located in Fairfax County, Virginia. (J.A. 1). Ms. Seguin's employment with Northrop Grumman is subject to Northrop Grumman's DRP effective January 30, 2004, as amended on September 15, 2006. (J.A. 56-57). Except in very limited circumstances not applicable here, the DRP requires both Northrop Grumman and its employees to resolve all employment-related disputes through mandatory binding arbitration. (J.A. 17).

Northrop Grumman mailed Ms. Seguin the DRP on September 29, 2006. (J.A. 123 and 129). Ms. Seguin also received notice of the DRP by electronic mail on February 9, 2004, May 10, 2004, and September 29, 2006. *Id.* (J.A. 127-30).[1] In addition, since its inception in 2004, the DRP has been available to all employees on Northrop Grumman's intranet website.

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[1] In particular, Ms. Seguin received a copy of Corporate Procedure H103 (Dispute Resolution Process) and Corporate Procedure H103A (Employee Mediation/Binding Arbitration Program). Northrop Grumman does not contend that Ms. Seguin received a copy of the forms (C-604, C-605, C-606, and C-607) that are referenced in H103 in the September 2006 mailing. The receipt of those forms, however, is not relevant to the parties' arguments on appeal. Northrop Grumman also notes that the first page of H103 submitted to the lower court contained a pagination error on page 1, which occurred when the document was converted from electronic to hardcopy format. (J.A. 18). "Page 1 of 31" should have read "Page 1 of 14." Again, this pagination error is not relevant to the parties' arguments on appeal.

(J.A. 177). Ms. Seguin admits that she was aware of the DRP prior to filing her lawsuit in 2007. (J.A. 104).

* * *

arbitration.[12] (J.A. 18-31). The DRP also, on several occasions, specifically informs employees that they should refer to Corporate Procedure H103A, Employee Mediation/Binding Arbitration Program, for more specific information on the arbitration process. (J.A. 20, 22, 23, 29, 31). For Ms. Seguin to now argue that the DRP is separate and distinct from the binding arbitration agreement is at best illogical, and at worst disingenuous. Ms. Seguin has no right, after the fact, to pick and choose which specific provisions of the DRP apply to her and which do not. *See Hightower*, 272 F.3d at 243 (stating employee cannot decide he would rather pursue claims in court after invoking the terms of the DRP).

Conclusion

Ms. Seguin seeks appellate review of the trial court's order compelling arbitration. This Court does not have jurisdiction to review the trial court's order under Virginia law. Moreover, even if this Court did have jurisdiction to review the order, which it does not, Ms. Seguin's assignments of error present

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[12] Corporate Procedure H103A, Employee Mediation/Binding Arbitration Program, "sets out the process and requirements for mediation and binding arbitration as referenced in *CO No. H103*, Dispute Resolution Process." (J.A. 32).

insufficient grounds upon which to grant her Appeal. Ms. Seguin's Appeal to this Court should be denied.

Dated this 18th day of August, 2008

Respectfully submitted,

/s/ Karen E. Gray

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* * *

TAB 2

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

CRISELL SEGUIN, Plaintiff, v. NORTHROP GRUMMAN SYSTEMS CORPORATION, *et al.*, Defendants.	CL-2007-5843

DECLARATION OF PATRICIA WOLF

I, Patricia Wolf, having personal knowledge of the facts set forth below, do hereby declare:

1. I hold the position of Director of Compliance and Employee Relations at Northrop Grumman Information Technology ("Northrop Grumman" or "the Company") and have held this position since January, 2002.

2. Northrop Grumman Corporation's Dispute Resolution Process ("DRP") was distributed to all Company employees via electronic mail on February 9, 2004, and again on May 10, 2004.

3. The DRP was amended on September 15, 2006. On September 29, 2006, the amended version

was distributed to Crisell Seguin and all other Company employees via electronic mail and first class U.S. mail. At all times while it has been in effect, it has also been posted on the Northrop Grumman intranet website.

4. Tab 1 of Defendants' Memorandum of Points and Authorities in Support of Their Demurrer, or in the Alternative, Motion to Compel Arbitration contains a true and correct copy of the documents relating to the DRP that were distributed to Ms. Seguin via electronic and first class U.S. mail on September 29, 2006, consisting of Corporate Procedure No. H103 (Dispute Resolution Process), Corporate Procedure H103A (Employee Mediation/Binding Arbitration Program), and a cover memorandum from Ian Ziskin, Chief Human Resources and Administrative Officer.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 9, 2007 /s/ Patricia A. Wolf
Patricia Wolf

Profile of 31 VSC Cases Relating to Writs of Mandamus over the last 12 years Extracted from CaseFinder (tm)

Rec.No.	Amt. Assessed	FOIA	Parties	Sub.Prev.Pty.	Pre	Citation and Parties
080282			Com-Com	Respondent		278 Va. 1 In Re: Commonwealth of Virginia 25 . . .
080946	0	InterLoc	Civ-Com	Respondent	w/o	277 Va. 293 Comcast v. Board of Supervisors 2 . . .
081000			Civ-City	Petitioner		277 Va. 250 Hale v. Board of Zoning Appeals o . . .
062688			Com-Com	Petitioner		276 Va. 127 Moreau v. Fuller 49 hits
062152	$50		Com-Civ	Petitioner		274 Va. 541 Umstattd v. Centex Homes 34 hits
060927	$30		Civ-City	Respondent		273 Va. 281 C. Givens Bros., L.L.C. v. Town of . . .
060554		Y	Civ-Com	Petitioner		273 Va. 326 Switzer v. Switzer 29 hits
052094	$30		Civ-Civ	Respondent	with	272 Va. 319 Barber v. VistaRMS, Inc. 76 hits
052333		Y	Civ-City	Petitioner		272 Va. 377 White Dog Publishing v. Culpeper . . .
051882		Y	Civ-Com	Petitioner		272 Va. 198 Bland v. Virginia State University 1 . . .
050212			Civ-Com	Petitioner		271 Va. 639 Ogunde v. Commonwealth 10 hits
060023			Com-Com	Petitioner		271 Va. 258 In re: Robert F. Horan 33 hits
050985			Com-Com	Petitioner		270 Va. 223 In Re: Gordon E. Hannett 54 hits
042240		Y	Civ-Com	Petitioner		270 Va. 58 Cartwright v. Commonwealth Trans . . .
041180			Civ-Com	Petitioner		269 Va. 546 Davenport v. Little-Bowser 22 hits
030723	?		Com-Civ	Petitioner		267 Va. 482 Beck v. Shelton 12 hits
021441			Com-Com	Respondent		265 Va. 313 In Re: Commonwealth's Attorney 3 . . .
020518	?		Civ-Com	Respondent		264 Va. 424 In Re: Hopeman Brothers, Inc. 20 . . .
012554	$50		Civ-Civ	Respondent		264 Va. 292 Titan America v. Riverton Investme . . .
011299	$30		Civ-City	Respondent		263 Va. 593 Ancient Art Tattoo Studio v. City of . . .
001947	$30		Civ-City	Respondent		262 Va. 364 Goldman v. Landsidle 38 hits
001729	$30	Y	Civ-Com	Respondent		262 Va. 154 Connell v. Kersey 28 hits
000337			Com-Civ	Respondent		261 Va. 113 Smith v. Richmond Newspapers, . . .
991282	?		Com-Civ	Petitioner		259 Va. 599 Hertz v. Times-World Corporation . . .
990030		Y	Civ-Com	Petitioner		258 Va. 598 Lawrence v. Jenkins 25 hits
981872	$30	Y	Civ-Com	Respondent		258 Va. 21 Moore v. Maroney 13 hits
981552			Com-Com	Respondent		257 Va. 365 Earley v. Landsidle 30 hits
980659	$30		Civ-Civ	Respondent		257 Va. 1 Pulliam v. Coastal Emergency Servic . . .
050597	$30		Civ-Com	Respondent		05 Va. S. Ct. UNP 050597 Witt v. Sinnen 7 hits
000633	?		Civ-Com	Respondent		00 Va. S. Ct. UNP 000633 In Re: The Virginian . . .
992827	$30		Civ-Com	Respondent		00 Va. S.Ct. UNP 992827 Watson v. Wiley 8 hit . . .

* Unaudited. Use at your own risk. The author is an unlicensed layman. All information and values are subject to interpretation, although a "best effort" was used.

090981	$50		Civ-Com	Respondent		In Re: Crisell Seguin

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 3rd *day of* November, 2000.

In Re: The Virginian-Pilot, Petitioner

Record No. 000633

Upon a Petition for Writ of Mandamus to compel action by the Circuit Court of the City of Portsmouth.

Upon consideration of the record, briefs, assignment of error, and argument of counsel, the Court is of opinion that the petition for writ of mandamus should be dismissed.

Invoking the original jurisdiction of this Court, the Virginian-Pilot filed a petition for a writ of mandamus to compel the Circuit Court for the City of Portsmouth to permit reproduction by photocopy or other means certain photographs that were introduced into evidence at the trial of Commonwealth v. Andre Stark, which ended in a mistrial. We have previously stated that "a litigant who seeks the issuance of a writ of mandamus must have no adequate remedy at law." Hertz v. Times-World Corp., 259 Va. 599, 608, 528 S.E.2d 458, 463 (2000). As in Hertz, the Virginian-Pilot's remedy at law is to file a petition to intervene in the underlying criminal case and pursue direct appeal of any adverse decision. "We have repeatedly held that the extraordinary remedy

of mandamus cannot be used as a substitute for appeal". Id. at 610, 528 S.E.2d at 464, See also Morrissette v. McGinniss, 246 Va. 378, 382, 436 S.E.2d 435 (1993); Richlands Medical Ass'n v. Commonwealth, 230 Va. 384, 387, 337 S.E.2d 737, 740 (1985).

Accordingly, the petition for writ of mandamus is denied.

JUSTICE KINSER, concurring.

Although I still adhere to the views expressed in the dissenting opinion in Hertz v. Times-World Corp., 259 Va. 599, 610-15, 528 S.E.2d 458, 464-67 (2000), I concur in the judgment in this case because of the principle of stare decisis. See Pulliam v. Coastal Emergency Servs. of Richmond, Inc., 257 Va. 1, 10, 509 S.E.2d 307, 312 (1999).

JUSTICE LACY, with whom JUSTICE KOONTZ and JUSTICE LEMONS join, dissenting.

I dissent for the reasons expressed in the dissenting opinion in Hertz v. Times-World Corp., 259 Va. 599, 610-15, 528 S.E.2d 458, 464-67 (2000).

A Copy,

Teste:

Clerk

(2)

No. 09-1350

Supreme Court, U.S.
FILED
JUN 15 2010
OFFICE OF THE CLERK

In The

Supreme Court of the United States

CRISELL SEGUIN,

Petitioner,

v.

KEN CUCCINELLI, Attorney General
for the Commonwealth of Virginia, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Virginia

SUPPLEMENTAL BRIEF

CRISELL SEGUIN, pro se*
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Centreville, Va. 20120-1450
(703) 851-6174
**Petitioner*

LIST OF PARTIES

Petitioner:	Crisell Sequin, pro se Plaintiff and Appellant Below
Respondent:	Ken Cuccinelli, Esq., Attorney General, Commonwealth of Virginia Mandamus Respondent Below
Also Served:	Robert F. McDonnell, Governor, Commonwealth of Virginia c/o Jason Ige, Esq. – Chief of Staff
Also Served:	Northrop Grumman Systems Corporation, and John C. Gage Defendants and Appellees Below

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13th Amendment to the United States Constitution; Section 1. *"Slavery prohibited. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."*.....*passim*

TABLE OF AUTHORITIES – Continued

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14th Amendment to the United States Constitution; "*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*".....5, 6

PETITIONER'S SUPPLEMENTAL BRIEF

A. ADDITIONAL STATEMENT OF THE CASE

This Supplement is presented to the Court pursuant to Rule 15.6 of the Court's Rules. Its primary purpose is to support Question 4 in Petitioner's Writ of Certiorari filed on May 4, 2010, but also contains information relative to the other questions, as well.

The petitioner (employee) believes that the other three major participants (Trial Court, VSC, Employer) in this case have performed inappropriately. At almost any juncture during this painful and damaging ordeal for the employee, any one of those participants could have placed this case back on a proper track, but none did.

B. COURT ERRORS

Please see Representative Violations Table (Sup. App. 12).

It was error for the trial court at hearing to ignore both Virginia and Federal laws and to attempt to force the petitioner to arbitration against her will. When she objected by filing an opposition brief on October 18, 2007 (Sup. App. 1), the trial court should have ordered her immediately to the jury trial already scheduled and released her from any contract she may have had so as to have prevented any semblance of servitude enforced by legal coercion. Please see the Jury Trial Scheduling Order (Sup. App. 15).

Even though the trial court's order directs the parties to arbitration, that doesn't necessarily mean that

the employer will go willingly, or without creating some other type of controversy. In at least one case; *Pennington v. NG*, CV 06-0614 WPL/ACT (Sup. App. 3), the employer refused to arbitrate even though they had asked for, and had obtained a court's favorable order. This disingenuous kind of behavior subverts the intent of the law, wasting everyone's time and money. Is it possible they would balk even if I would agree to arbitrate. What a precarious trap I would be in then. There are several other traps still lurking within their arbitration proposal that they don't overtly advertise.

It was error for the Virginia Supreme Court not to take jurisdiction under 9 U.S.C. 16(a)(1)(A) and *Green Tree Financial Corp. of Alabama v. Randolph*, 531 U.S. 79 (2000) and provide a proper appeal, provide a stay, strike the false pleadings, reverse the trial court's order as erroneous based upon Virginia law, and send the case back for amendment (if so advised) and a jury trial on the merits of defamation, or to reverse the order and release the employee under violations of law and the 13th Amendment back to the trial court.

It was error for the Virginia Supreme Court under a mandamus not to order the trial court to proceed to a jury trial for contract existence, and not to order a stay.

It was error for the Virginia Supreme Court, in original jurisdiction, not to discipline, nor to recommend discipline, for misbehaved parties.

It was error for the Virginia Supreme Court to assess a "tax" upon the petitioner in the manner in which it has.

C. EMPLOYER ERRORS – UNDER COLOR OF LAW

Please see Representative Violations Table (Sup. App. 12).

As this Court said in *United States v. Price*, 383 U.S. 787 (1996) "To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.".

The employer "acted under color of law" by filing its false pleadings in a county circuit court who cooperated with the employer and by utilizing a second state court to violate the petitioner's rights.

The employer filed a Motion to Dismiss the Petitioner's Petition for Writ of Mandamus (Sup. App. 5), intentionally taking the state's same position (Sup. App. 7) it appears, either by apparently corroborating, or by working in cooperation therewith. The petitioner believes this act was malicious toward the employee due to the fact that they were still concealing material information which favored the employee. I also believe it was at least disingenuous toward the two courts since the employer chose to file a motion to dismiss instead of presenting the concealed evidence to the court.

D. CONTRACTUAL SERVITUDE

It is standard judicial practice in Virginia for trial courts to automatically release attorneys who motion the court for withdrawal from a case regardless of the reason. The most common reason for allowing attorneys to withdraw is the 13th Amendment.

In both *Clyatt v. United States,* 197 U.S. 207 (1905) and later in *Pollock v. Williams,* 322 U.S. 4 (1944) this Court said; " . . . like any other contractor, to an action for damages for breach of that contract, can elect at any time to break it, and no law or force compels performance or a continuance of the service."

The trial court below has been a chief judge for several years and has decided many cases. Given such he cannot say that he made his decisions without willfulness. Nor can he say he made them without knowledge of the consequences of his actions. He stated on the face of his order "having heard argument and reviewed the memoranda of law submitted by the parties" (App. 7).

He therefore willfully and wantonly decided to violate my rights, including my constitutional rights, my right to a jury-trial, and my right to have a stay, and others. He did so with forethought, and in flagrant and reckless disregard for the law. This caused what I call "contract servitude". He could have released me to my demanded jury trial just as he releases attorneys who wish to withdraw.

E. 13TH AND 14TH AMENDMENTS

In *Butler v. Perry*, 240 U.S. 328 (1916), Butler's position as a forced laborer against a Sheriff indicated that Florida law supporting forced labor was "invalid because they undertook to impose involuntary servitude not as a punishment for crime, contrary to the 13th Amendment to the Federal Constitution; but also because their enforcement would deprive the plaintiff of his liberty and property without due process of law, in violation of the 14th Amendment.", but the Court ruled against Butler, primarily quoting historical reasons.

In a response to a challenge of the 14th Amendment, in *Screws v. U.S.*, 325 U.S. 91 (1945) the Court said; "The treacherous ground on which state officials . . . **judges** – would walk is indicated by the character and closeness of decisions of this Court interpreting the due process clause of the Fourteenth Amendment." (Emphasis added).

The *Screws* Court went on to say that; "If those acts are done willfully, how can the officer possibly claim that he had no fair warning that his acts were prohibited by statute? He violates the statute not merely because he has a bad purpose but because he acts in defiance of announced rules of law. He who defies a decision interpreting the Constitution knows precisely what he is doing.".

That Court also added; "The problem is not whether state law has been violated but whether an inhabitant of a State has been deprived of a federal right by one who acts under 'color of any law'. He who acts under 'color' of law may be a federal officer or a state officer. He may act under 'color' of federal law or of state law.". And further; "For it was abuse of basic civil and political rights, by states and their officials, that the (14th) Amendment and the enforcing legislation were adopted to uproot." (emphasis added). And then, finally; " . . . state officials who violate their oaths of office and flout the fundamental law are answerable to it when their misconduct brings upon them the penalty it authorizes and Congress has provided."

F. EMPLOYER'S INTENTIONS

From the moment the employer filed its intent to compel arbitration with the trial court on July 16, 2007 (Sup. App. 8) until today, it has continued to attempt to take advantage of both the legal system and me by using the legal process to force me to attend arbitration against my will. I lodged my proper and timely objection to their attempts to compel with the trial court, but it was effectively, and it appears, intentionally ignored. At any point the employer could have withdrawn its pleadings, or at least corrected its filings so that I could go to trial, but it wouldn't, even after multiple notices of errors to it and the court.

My employer's coercion, by using the legal system to attempt to unlawfully force me to do something, against my explicitly stated will, violates my 13th Amendment rights just as much as it would if a judge would refuse to allow an attorney to withdraw from a case as described above, since it was, and is, being done under color of law and not as punishment for a crime.

Employer's proposed arbitration agreement includes: "**This program covers claims that the Company may have against you or your successors and assigns and covers claims that you may have against the Company or any of its successors and assigns**.".

This repugnant condition is what I refer to as the "Forever Clause". Most contracts can be terminated by either party at any time, especially if it is an employment contract. This clause, on the other hand, would involuntarily bind me past internment, may violate any will that I have, and potentially load my heirs with unjustified burdens. The company is attempting to dictate this clause without my involvement and against my free will. I won't have a choice if I succumb to arbitration. I believe that this clause may violate Virginia's probate process, but I haven't yet had the time to prove it.

In contrast, I have provided a copy of the arbitration clause in the employment contract the company has with executives and several senior managers (Sup. App. 10). As can be seen, it is less than

100 words (compared to some 30 pages and approximately 6,066 words), but most importantly, it does not bind "senior executives" in the same way. This difference, I believe, would qualify as unequal treatment between employees and is discriminatory between that class of workers (which are treated differently in many other ways as well) versus "employees".

This "Forever Clause" violates the 13th Amendment, because the requirement it creates is not voluntary for the employee, it can never end, and it certainly doesn't allow the inclusion of heirs. In other words there is "no way out". It creates unlawful perpetual performance, and because compliance with the proposed contract is a part of being coerced by using the law in this case. Coupled with the possibility of being forced to pay all of the filing fees and other unwarranted expenses, this comes directly under the definition of "involuntary servitude", i.e. performing any act against one's free will which either; takes something of value away from the servant without just cause, or provides benefit to the master without providing just compensation, or both.

G. THE HARM

In one case involving the 13th Amendment; *United States v. Kozminski*, 487 U.S. 931 (1988), the Court said; "It suffices to observe that one can imagine many situations in which nonphysical means of private coercion can subjugate the will of a servant.".

I feel that I am a "psychological prisoner" in this case because I can't exercise my own free will without fear of retribution or significant loss. I feel that I am a "physical prisoner" as well due to being under threat of contempt if I try to go to jury trial while under the trial court's current order.

I also feel like I am an "economic hostage" as well. Not only would I have lost a significant amount of salary and vacation if I had left the company, but the benefits (both monetary and non-monetary) I have accrued are also significant after 21+ years of meritorious service, 10+ of which was in management, not to mention the lost goodwill.

I had to seek more than a year of professional counseling in the beginning to be able to survive the extensive pain I have suffered. At several points, the mental anguish I experienced was so great that I had to be hypnotized by my psychologist in order to obtain relief, my medical physician had to prescribe sedatives so that I could sleep, my heart medicines had to be increased significantly, and my chiropractor had to treat me for almost two years for severe back stress. Even the Commonwealth of Virginia designated me a physically handicapped person, for purposes of driving, for more than a year.

My manager had a game on his desk similar to one of those that carnivals have that uses a hard cloth hammer mallet to whack a fuzzy little animal when he comes up out of his hole. The objective being

to strike the animal on the head to make him go back down his hole in order to score points.

On several occasions, while I was in my manager's office, he would hold that hammer with one hand and slap it against his other hand hard enough with the mallet that it would startle me and would make me jump each time that he did it.

On one occasion, early one morning my manager even said to me glibly; "I put a bullet in his head this morning.", referring to a contractor.

On another occasion, my team had not been able to finish some priority work during the week, due to no fault of our own. My manager insisted that it had to be done before Monday morning, so we worked late that Friday night and the following day Saturday without overtime pay. After many hours we had not yet finished so I inquired of my manager if we could finish what little we had left early Monday. His response was "No, work them until they drop".

The *Kozminski* Court also said; " . . . the vulnerabilities of the victim are relevant in determining whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve."

Some of my peers were talking to one of the managers that had replaced me one day and they indicated that he told them he "had a pistol in his vehicle". Such an act is strictly against company policy on company property and I take all such

information seriously, so I reported the incident to HR.

That same manager recorded instructions in a voice mail to me over the phone while he was within earshot of several peers, but didn't hang up the phone when he finished. He made several disparaging remarks to those employees about me and my performance, after he finished his instructions, not knowing that he was still being recorded.

All of these combined have created an abusive and harassing work environment.

In the three years since the 2006 false review, I have received 0%, 1%, and 2.5% respectively, in addition to the title and position demotions. Within each of the last three annual reviews since demotion, I have had to file complaints about the number and audacity of the falsities placed in them. Two were partially corrected, but I am still struggling to get the third corrected.

My current employer merged with another large contractor approximately 13 years ago. In so doing, that company set up a static retirement fund for employees at that time in order to protect their seniority. After reaching age 60 and after being with my current company 10 years, that fund would vest. The meeting of those two parameters occurred for me in ***August 2007***. If my employer would have succeeded in terminating me or had forced me to quit before then, I would have lost the unvested

amount to company coffers because termination would have preceded the two required events.

About a month ago I found a renegotiated contract clause for the CEO (Sup. App. 11) in the SEC's database of significant corporate activities which shows that he convinced the company to modify ONLY HIS 10 year requirement to such a time as when he leaves instead of a fixed term. I could not find this kind of vesting change for any other employee, nor was it offered to any other employee, that I know of.

The *Kozminski* Court also said; " . . . Congress understood 'involuntary servitude' to cover servitude compelled through other means of coercion."

CONCLUSION

I truly believe that I cannot exercise my free will due to both statutory and circumstantial involuntary servitude, primarily because of my employer's actions, but also partially because of what I believe to be biased decisions of two courts of law, which are beyond my control, without incurring severe penalties because I have no viable alternatives, save the judgment of this Court.

What I claim is that my employer and two courts of law, have acted willfully and wantonly, and in combination, under color of Virginia law, to deprive me of, or to restrict, rights and privileges which are

secured and protected by the Constitution and the laws of the United States, namely (but not limited to) the rights; to have a jury trial, to due process of law, to equal protection under the law, to equal access of the law, to person and property unless taken by just cause, to fair and equal taxation, to proper notice, confrontation, and representation; and to freedom from involuntary, or other form of servitude without being punished for a crime.

ADDITIONAL PRAYER

In addition to the prayers in the Petition for Writ of Certiorari, the Petitioner prays that this Court order a stay with an effective date of July 16, 2007, the date of employer's *Intent to File* its pleading below.

Dated this 15th day of June, 2010.

Respectfully submitted,

CRISELL SEGUIN, pro se*
15015 Kamputa Dr.
Centreville, Va. 20120-1450
(703) 851-6174
**Petitioner*

VIRGINIA:

IN THE CIRCUIT COURT
FOR FAIRFAX COUNTY

CRISELL SEGUIN,	)	
Plaintiff,	)	
v.	)	
NORTHROP GRUMMAN SYSTEMS CORPORATION, ET AL.,	)	**CL-2007-5843**
Defendants.	)	

PLAINTIFF'S OPPOSITION TO DEMURRER OR, IN THE ALTERNATIVE, MOTION TO COMPEL ARBITRATION

Plaintiff, by counsel, hereby files her opposition to defendants' demurrer or, in the alternative, motion to compel arbitration.

I. The Motion to Compel Arbitration.

A. Defendants waived their right to contest this Court's jurisdiction.

By filing their demurrer and separate motion to crave oyer, defendants submitted to this Court's jurisdiction and waived their objection to having the Court, rather than an arbitrator, adjudicate plaintiff's claim. *Franklin v. Commonwealth*, 27 Va. App. 136, 497 S.E.2d 881 (Va. App. 1998) (Court held " . . . that by making a request for affirmative relief,

husband entered a general appearance and submitted himself to the authority of the court", citing authorities. (Footnote omitted.)); *Matter of Albert N. Moore*, 209 U.S. 490 (1908) (Both parties submitted to the trial court's jurisdiction: the defendant by filing a petition for removal, the plaintiff by filing an amended complaint after removal.) Therefore defendants' motion to compel arbitration should be denied on this ground alone.

B. Based on contract law principles, no enforceable arbitration agreement exists.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CHRISTINE M. PENNINGTON,

Plaintiff,

v.

NORTHROP GRUMMAN SPACE & MISSION SYSTEMS CORPORATION,

Defendant.

CV 06-0614 WPL/ACT

ORDER

* * *

Northrop Grumman's alternative argument regarding the TRW agreement. (Doc. 41.)

Pennington subsequently attempted to pursue arbitration of her claims. In doing so, she informed Northrop Grumman that she intended to request a ruling from the arbitrator as to which arbitration agreement is in force. (Doc. 53 Ex. 1, 4.) Because I ruled that the 2004 agreement is binding, Northrop Grumman refuses to proceed with arbitration unless Pennington acknowledges that the 2004 agreement governs. (*Id.* Ex. 1, 4, 5.) Northrop Grumman has also threatened to take legal action against the arbitration organization if it proceeds with arbitration without Northrop Grumman's participation. (*Id.* Ex. 16A.)

In her motion for relief from judgment, Pennington contends that Northrop Grumman's

actions demonstrate that it changed the arbitration rules after the summary judgment was entered. She accuses Northrop Grumman of taking inconsistent positions regarding the validity of the TRW agreement – first arguing before this Court that the agreement was binding and now asserting that it is no longer in effect. According to Pennington, Northrop Grumman's actions constitute newly discovered evidence, demonstrate that the summary judgment was based on misrepresentations regarding the applicable arbitration procedures, and entitle her to relief from the judgment.

* * *

/s/ William P. Lynch
WILLIAM P. LYNCH
UNITED STATES
MAGISTRATE JUDGE

IN THE SUPREME COURT OF VIRGINIA

In re CRISELL SEGUIN,	)	Record No. 090981
Petitioner.	)	**MOTION TO INTERVENE**

CO-RESPONDENTS' MOTION TO INTERVENE AND LEAVE TO FILE THEIR MOTION TO DISMISS

COMES NOW, Northrop Grumman Systems Corporation ("Northrop Grumman" or "the Company") and John C. Gage ("Mr. Gage"), by and through their undersigned counsel, to respectfully request that this Court grant their Motion to Intervene in response to the Petition for a Writ of Mandamus filed by Crisell Seguin ("Ms. Seguin"). Northrop Grumman and Mr. Gage have been designated Co-Respondents and are parties in interest with a Motion to Dismiss germane to the subject matter of the proceeding. Northrop Grumman and Mr. Gage have been involved with corresponding litigation with Ms. Seguin dating back to May 2007.

Dated this 1st day of June, 2009.

Respectfully submitted,

/s/ James J. Kelley
James J. Kelley (VA Bar No. 13869)
David R. Broderdorf (VA Bar No. 76538)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 739-3000/(202) 739-3001 (Fax)
Attorneys for Co-Respondent

IN THE SUPREME COURT OF VIRGINIA

IN RE: CRISELL SEGUIN, Record No. 090981

Petitioner.

MOTION TO DISMISS

For the reasons stated more fully in the accompanying Memorandum of Law, the Respondent, the Honorable Dennis J. Smith, Chief Judge for the Circuit Court of Fairfax County ("Judge Smith" or "Circuit Court"), asks this Court to dismiss the Petition under Rule 5:7 because the Petition: (1) attacks a discretionary ruling of the Circuit Court; and (2) tries to correct a purported error through this writ, namely the Circuit Court's decision to rule on the arbitration issue as a matter of law.

Respectfully submitted,

THE HON. DENNIS J. SMITH JUDGE,
FAIRFAX COUNTY CIRCUIT COURT

Respondent

By: /s/ Stephen Hall
Counsel

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE COUNTY OF FAIRFAX

CRISELL SEGUIN, Plaintiff, v. NORTHROP GRUMMAN SYSTEMS CORPORATION, *et al.*, Defendants.	CL-2007-5843 **RESPONSIVE PLEADING**

DEFENDANTS' DEMURRER OR, IN THE ALTERNATIVE, MOTION TO COMPEL ARBITRATION

Defendants Northrop Grumman Systems Corporation ("Northrop Grumman") and John C. Gage (hereinafter "Defendants"), by and through their undersigned counsel, hereby file their responsive pleading consisting of a Demurrer or, in the alternative, a Motion to Compel Arbitration, to the Complaint filed in this matter by Plaintiff Crisell Seguin ("Seguin").

Plaintiff is a current employee of a Northrop Grumman subsidiary. Mr. Gage is a manager in Plaintiff's chain of command. In her Complaint, Plaintiff seeks to recover damages for defamation/libel allegedly committed by Defendants in the course and scope of Plaintiff's employment. *See generally* Complaint. These specific claims, however, are subject to resolution

through mandatory binding arbitration, as set forth in Northrop Grumman's Dispute Resolution Process, and are not properly brought before this Court. For this reason, Plaintiff's Complaint should be dismissed.

The parties, through their counsel, have agreed to pursue private mediation in advance of resolving their relative positions on mandatory arbitration. As such, Defendants have not docketed and will not pursue their Demurrer or, in the Alternative, Motion to Compel Arbitration pending the outcome of the parties' private mediation. Defendants intend to appear at the Scheduling Conference set for 8:30 a.m. on Thursday, August 2, 2007, to advise the Court of the parties' progress regarding mediation. In the event that mediation is unsuccessful, Defendants will notice their Demurrer or, in the Alternative, Motion to Compel Arbitration and will file a memorandum of points and authorities in support thereof in accordance with the Court's requirements.

Dated this 16th day of July, 2007.

Respectfully submitted,

/s/ Karen E. Gray
James J. Kelley (VA Bar No. 13869)
Karen E. Gray (VA Bar No. 47747)
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(202) 739-3000
(202) 739-3001 (Fax)
Attorneys for Defendants

Employment Agreement – Northrop Grumman Corp. and Ronald D. Sugar (Sep 19, 200 . . . Page 20 of 22

* * *

ARBITRATION Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration, conducted before a single arbitrator in the State of California (in the major city nearest Executive's residence) in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association then in effect. The decision of the arbitrator will be final and binding upon the parties hereto. Judgment may be entered on the arbitrator's award in any court having jurisdiction. The arbitrator may, but need not, award the prevailing party in any dispute (as determined by the arbitrator) its or his legal fees and expenses.

* * *

---

* * *

Termination of Employment Agreement of Ronald D. Sugar

On December 17, 2008, Dr. Sugar executed a letter agreement (the "Letter Agreement") confirming a mutual agreement between Dr. Sugar and the Company to terminate his Employment Agreement with the Company dated February 19, 2003. The Letter Agreement, attached hereto as Exhibit 10.2, supersedes all prior agreements regarding Dr. Sugar's employment matters, terminates all rights and obligations under or pursuant to the Employment Agreement, and shall become effective on December 31, 2008. In addition, it includes a provision providing Dr. Sugar "retirement" treatment of his equity grants in the event he is terminated without Cause (as such term is defined in his equity grant certificates) before he has ten years of service with the Company for purposes of the Northrop Grumman 2001 Long-Term Incentive Stock Plan (LTISP).

* * *

Representative Violations Table[fn]

No.	Entity	Alleged Violation	Evidentiary Artifact(s)
1	TC/E/ VSC	VSCR 3:20 FRCP 42(a)	TCO, TRN, MTC, APP, & MAN
2	TC/E/ VSC	VSCR 3:21(c)	TCO, TRN, MTC, APP, & MAN
3	TC	VAC 8.01-581.02(A)	TCO, TRN, MTC, APP, & MAN
4	TC	VAC 8.01-581.02(B)	TCO, TRN, MTC, APP, & MAN
5	TC	VAC 8.01-581.02(D)	TCO, TRN, MTC, APP, & MAN
6	TC/E/ VSC	VAC 8.01-336(A)	TCO, TRN, MTC, APP, & MAN
7	TC	VAC 8.01-581.04(A)	TCO, TRN, MTC, APP, & MAN
8	TC/E/ VSC	9 USC 4	TCO, TRN, MTC, APP, & MAN
9	TC/E/ VSC	VA Constitution AI SII	TCO, TRN, MTC, APP, & MAN
10	TC/VSC	VA Constitution AI S5	TCO, APO, & MAO
11	TC/VSC	VA Constitution AII S7	VOL & UCV

[fn] Legend presenting key to abbreviations appears at end of table.

12	TC/VSC	VA Constitution AIII S1	TCO, APO, & MAO
13	TC/VSC	Canons of Judicial Conduct #2	TCO, APO, & MAO
14	TC/VSC	Canons of Judicial Conduct #3	TCO/APO, & MAO
15	TC/AG	VAC 8.01-271.1/ FRCP Rule 11	APO & MAO
16	TC	VAC 8.01-581.03(A)	TCO, TURN, MTC, APP, & MAN
17	TC/VSC	9 USC 3	TCO, TRN, MTC, APP, & MAN
18	TC/E	VSCR 6:2-3.4(a)	RSC, Opt-out & Mgmt Exclusion, & Ziskin Letter
19	TC/VSC	VSCR 6:3-3(D)(2)	MTC & MAO
20	TC/VSC	VSCR 6:3-3(5)	APO & MAO
21	TC	VSCR 3:18	TCO & TRN
22	TC/VSC/ E	VSCR 3:22	TCO, TRN, MTC, APP, & MAN
23	VSC	9 USC 16(a)(1)(A)	APO
24	VSC	VAC 17.1-600 et.seq.	MAO
25	E/VSC	VAC 1-248	DRP/MAO
26	VSC	US Constitution 14th Amendment	MAO
27	E	VSCR 6:3-3(a)(3)	Opt-out & Mgmt Exclusion, &

			Ziskin Letter
28	VSC	US Constitution 5th Amendment	MAO
29	VSC	US Constitution 6th Amendment	MAO
30	AG	VSCR P2, S6 Rules of Professional Conduct 1.11, 1.16, 1.7, 3.3, 3.7, & 8.4	MAO

Legend:

APO = Appeal Order
APP = Appeal
DRP = Dispute Resolution Process
FRCP = Federal Rules of Civil Procedure
MAN = Mandamus
MAO = Mandamus Order
MTC = Motion to Compel
RSC = Rule to Show Cause
TCO = Trial Court Order
TRN = Transcript
UCV= US Constitutional Violation
USC = US Code
VAC = Virginia Code
VOL = Violations of Law
VSCR = VSC Rules

Entity – TC = Trial Court; VSC = Virginia Supreme Court; E = Employer; and AG = Attorney General of Virginia

VIRGINIA:

IN THE CIRCUIT COURT
OF FAIRFAX COUNTY

Crisell Seguin, **Plaintiff(s)** **versus** Northrop Grumman Systems Corporation et al **Defendant(s)**	)	**Case No.** CL 07 5843

SCHEDULING ORDER

THE SCHEDULING CONFERENCE was held August 9, 2007.

After discussing the various issues presented, it was **ORDERED**:

I. Trial

The trial date is 5 May 08 (with a jury) (without a jury). The estimated length of the trial is 3 days.

II. Discovery

The parties shall complete discovery, including depositions, by thirty (30) days before trial; however, depositions taken in lieu of live testimony at trial will be permitted until fifteen (15) days before trial. "Complete" means that all interrogatories, requests for production, requests for

admissions and other discovery must be served sufficiently in advance of trial to allow a timely response at least 30 days before trial Depositions may be taken after the specified time period by agreement of counsel of record or for good cause shown, provided however, that the taking of a deposition after the deadline established herein shall not provide a basis for continuance of the trial date or the scheduling of motions, inconsistent with the normal procedures of the court. The parties have a duty to seasonably supplement and amend discovery responses pursuant to Rule 4:1(e),of the Rules of the Supreme Court of Virginia. "Seasonably" means as soon as practical. No provision of this Order supersedes the Rules of the Supreme Court of Virginia governing discovery. Any discovery motion filed shall contain a certification that counsel has made a good faith effort to resolve the matters set forth in the motion with opposing counsel.

III. Designation of Experts

If requested in discovery, plaintiff's, counterclaimant's, third party plaintiff's and crossclaimant's experts shall be identified on or before 90 days before trial. If requested in

* * *

No. 09-1350

SUPREME COURT, U.S.
FILED
JUL 15 2010
OFFICE OF THE CLERK

In The

Supreme Court of the United States

CRISELL SEGUIN,

Petitioner,

v.

CIRCUIT COURT OF VIRGINIA,
FAIRFAX COUNTY, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Virginia

PETITION FOR REHEARING

CRISELL SEGUIN, pro se*
15015 Kamputa Dr.
Centreville, Va. 20120-1450
(703) 851-6174
**Petitioner*

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The petitioner respectfully prays that this Court, pursuant to its Rule 44, accept this Petition for Rehearing, and also moves this Court for an order; (1) vacating its order of June 21, 2010, which denied the petition for writ of certiorari filed by the petitioner on May 6, 2010, and (2) granting the petition for writ of certiorari. The grounds for rehearing are stated below.

ALTERNATE JURISDICTIONAL AUTHORITY

The petitioner prays that 42 USC 1332, the "Diversity Statute" be considered as an alternative if neither of the other jurisdictional authorities in the Petition and/or Supplement are acceptable.

The defendant employer (movant) below is a global security and technology company incorporated in Delaware with its main headquarters in Los Angeles, California, with more than 100,000 employees world-wide, with many locations throughout the United States, and is engaged in interstate commerce. The petitioner's (employee's) normal work location is in Chantilly, Virginia, but works on employer products located in many different states and foreign countries.

ALTERNATE QUESTIONS FOR CONSIDERATION

The petitioner prays this Court consider the following alternate questions in lieu of, or in addition to, the questions located in the petitioner's Writ, given the significant change in circumstances which have occurred, as described hereinafter;

QUESTION 1: Is an order compelling arbitration rendered erroneous, thus making it void, if evidence proving beyond a reasonable doubt was recently discovered, that the movant was associated with false material evidence it submitted, and concealment, in obtaining said order; and if so, due to the lack of evidence then to support a 9 USC § 2 claim, is a proposed arbitration clause embedded within the petitioner's at will employment contract, rendered unenforceable as to the petitioner due to attempted coercion and misrepresentation by the movant?

QUESTION 2: Is this Court's interpretation of 9 USC § 1 *et seq.* consistent with congressional intent and if so shouldn't petitioner be ordered to jury trial on the merits instead of arbitration?

REASONS FOR GRANTING REHEARING

I. The Court's Very Recent Decisions in Three Cases have a Direct and Significant Effect on this Case.

a. In *Granite Rock Co. v. Teamsters* this Court stated that; "Arbitration is strictly 'a matter of

consent'," quoting *Volt Information Sciences*, and thus "is a way to resolve those disputes – but only those disputes – that the parties have agreed to submit to arbitration," *First Options*. It has not been shown by the movant below in the underlying case, in any court, that proper "consent" has ever been given by the petitioner to arbitrate any dispute, in fact, the opposite has been repeatedly demonstrated in several ways by the petitioner in its pleadings and filings.

The *Granite Rock* case is a perfect example of precisely why and how the trial court below in this case failed to meet its responsibility in determining if, or whether, a valid arbitration agreement existed between the parties, given that an arbitration clause had been presented to a court for review, which was, and still is, in contention. (Albeit, as will be seen later in this petition, the movant submitted a false arbitration clause to the trial court for its determination, but due to confidentiality restrictions upon the petitioner, plaintiff below, she could not independently prove that absence of consent, and the falsity of evidence, until recently; at least partially due to the movant's concealment of relevant and material evidence, its denials of misrepresentation, and its lack of desire to correct the evidence in error.)

The "movant" in *Granite Rock* (the company) contended that an arbitration agreement had been reached, but the "employee" (union) rebutted the company's assertions. ***This is exactly the same circumstance which occurred early on in this case below***. The movant produced a document it

contended was legal and in force. This petitioner described a number of reasons why the company was incorrect and that it did not agree.

To resolve this agreement existence dilemma, obviously knowing that 9 USC § 4 requires that "the court shall hear the parties" and "direct the parties to proceed to arbitration in accordance with the terms of the agreement" except "if making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue," in which case "the court shall proceed summarily (quickly) to the trial thereof." (explanation added), the district court in *Granite Rock* directed the parties to a jury trial where a determination was made, obviously realizing that material issues were in dispute, just as they are in the present case below.

The petitioner (plaintiff below) contested early on that no arbitration clause had been agreed upon, and has continued to hold that position to this very day, but the trial court below made the determination itself, without a jury, contrary to both the FAA and Virginia law since the petitioner had demanded a jury trial in her original defamation complaint. See, e.g., FRCP 38(a).

The case below has never gotten past the first stage of judicial development even after three years of judicial actions. The case is in pre-discovery, with a contested interlocutory order. A position that places the case in a "formation dispute" which must be resolved regarding the arbitration clause before the

case can continue. This is also called a "gateway issue" by this Court in several cases. If the petitioner succumbs to arbitration, the costs will be wasted due to her certain judicial protest post-arbitration, which is against the public policy of efficient and effective resolutions.

Justice Sotomayor, with Justice Stevens joining, in a *Granite Rock* dissent stated; "Arbitration, (we) all agree, 'is a matter of contract and a party cannot be required to submit to arbitration any dispute which it has not agreed so to submit.'" (emphasis added) accord *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960). And goes on to say; "Before ordering parties to arbitrate, a court must therefore confirm (1) that the parties have an agreement to arbitrate and (2) that the agreement covers their dispute.". The trial court below either did not use, or ignored, the proper process in determining the answers to these critical questions, therefore, the trial court's order compelling arbitration should be reversed and the case remanded for a jury trial on the merits to the trial court with amended complaint, if so advised.

b. Justice Scalia in *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. ___ 09497 (2010) said; "To satisfy itself that such agreement exists, the court must resolve any issue that calls into question the formation or applicability of the specific arbitration clause that a party seeks to have the court enforce.". The petitioner provided the trial court below, as well as the Virginia Supreme Court, with several issues related

to the movant's arbitration clause, including misrepresentation.

Therefore, the movant's arbitration clause must be severed from the petitioner's at will employment contract by this Court, and movant enjoined from unilaterally imposing an arbitration clause upon the petitioner ever again.

c. Imposing arbitration upon a party who has not agreed to arbitrate violates the FAA, as demonstrated in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. ___ 081198 (2010) where this Court said, "Imposing {class} arbitration on parties who have not agreed to authorize {class} arbitration is inconsistent with the Federal Arbitration Act (FAA), 9 U.S.C. § 1 et. seq." (emphasis added, and page references omitted). By the same token, even though this very recent case deals with the class action issue specifically, the Court's general directive regarding forced arbitration comes through simply by blanking the word {class}. The end result is the same.

Because the subject arbitration clause was imposed, thus forced, upon the petitioner, in violation of *Stolt*, without the ability to negotiate or even comment, the trial court's order must be reversed, and since the petitioner has made it clear that she has never agreed to arbitrate anything, the

arbitration clause itself should also be rendered ineffective.

II. A recent National Event, the General Kagan U.S. Supreme Court Senate Confirmation Hearings, Expressed and Clarified Congressional Arbitration Intent which has Heretofore been Unavailable.

The movant's arbitration clause is enforced by 9 USC § 1-16 et. seq. (R.App. 1). The petitioner has never agreed with the clause and has never signed it, in contrast to what many of her peer employees have done. This makes the petitioner's circumstance considerably unique.

The petitioner did not sign an employment agreement when first employed by the movant because the petitioner's legacy company was taken over by the movant.

Federal statute 9 USC § 1 states; " . . . but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.". As a Virginia at will contract employee, the petitioner fits within the specification of the last phrase. As Senator Franken put it so candidly and succinctly in the recent Supreme Court confirmation hearings for Solicitor General Kagan, "This really should have been a no-brainer because the Federal Arbitration Act of 1925, the law that says which

arbitration agreements should be enforced, specifically exempts, quote, 'contracts of employment of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce.'". (R.App. 42).

In *Wards Co. v. Lewis & Debrow,* 210 Va. 751, 173 S.E.2d 861 (1970) the Virginia Supreme Court (VSC) stated; "We have long held that a contract to furnish services or a contract of employment for an indefinite period is, upon reasonable notice, terminable at will by either party.".

The petitioner has agreed to work for a sum of money in providing personal services to the movant, which has been accepted, and for an unspecified period of time; therefore, under Virginia law, the petitioner is an at will contract employee as stated by the trial court and petitioner's counsel in the hearing transcript (R.App. 5), "This is an employment at will.".

Petitioner's position regarding the validity of an arbitration agreement has remained clear throughout; as in her Opposition to Motion to Compel where her counsel stated, "Based on contract law principles, no enforceable arbitration agreement exists." and "Plaintiff's contract of employment with Northrop Grumman ("NG"), which was at will, was silent on the issue of whether disputes would be subject to binding arbitration" (R.App. 8); to the hearing transcript where the trial court stated; "They cannot unilaterally change a written contract.", and her counsel stated, "That is analogous to a contract of adhesion." (R.App. 5), to the trial court's order where

her counsel wrote; "Seen and Excepted to for reasons stated in the Court and in Memoranda of law." (App. 8), to the VSC Petition for Appeal where petitioner's counsel stated; "At no time did Ms. Seguin ever agree, verbally or in writing, to be bound by the arbitration provisions." (R.App. 12), to the Mandamus, "The petitioner denies that she ever agreed to any supposed contract." (R.App. 14), and finally, in her Petition for Certiorari, "Throughout this case the employer has concealed the fact, that as a manager, this employee was exempt from arbitration (App. 24)".

The above, plus explicit respondent waivers refusing to take a position on these issues with this Court (USSCR 15.2), shows demonstrably that no agreement to arbitrate exists, nor has one ever.

Forcing mandatory arbitration on the unwilling petitioner is in violation of the Federal Arbitration Act (FAA).

As Senator Franken indicated; "***Talk about not getting your day in court. Now you can't get your day in court to get your day in court.***" (emphasis added). (R.App. 47). It is clear that Congress never meant for arbitration to be treated in such a manner as to elevate it above the actual laws and the body that created it in the first place, yes, even above the Constitution itself.

If this Court agrees, with Senator Franken, it must reverse the trial court's order compelling arbitration and the movant's arbitration clause must be stricken from the petitioner's at will employment agreement.

III. Recently Discovered Evidence Regarding False Documents Submitted to a Court of Law, and Apparent Concealment of other Relevant Evidence, by the Movant, Material to a Trial Court's Order Compelling Arbitration, Renders said Order Erroneous and therefore, Void.

The movant below requested an order compelling arbitration from the trial court and submitted 2 pleadings each on October 9, and 25, 2007. After realizing it had made errors in the first set, they submitted additional pleadings in further support thereof with corrections, clarifications and additional evidence, the day before the hearing but they were still erroneous. The movant provided the trial court judge with a personal copy of the second set of pleadings by hand delivering them to the judge's chambers (R.App. 15).

Each of the four submitted pleadings contained a declaration under penalty of perjury and were all signed by the same senior Human Resources manager (App. 49-50) who has been an employee of the movant for many years. The second two declarations were "Amended" (R.App. 18). All four declarations referred to the same exhibit entitled "TAB1", containing two separate Corporate Procedures H103, and H103A and some forms.

TAB1 contained two errors, a pagination error (App. 39), and a future-dated form error of "02/07" (R.App. 21) which was more than four months after the proposed agreement was released on September

29, 2006, supposedly mailed to all appropriate employees (App. 37-38).

In the October 25, 2007 pleadings, the movant described in a footnote (R.App. 22), that it had "inadvertently omitted" two other forms (4 pages). The movant also explained that the original TAB1 contents, along with ALL FOUR FORMS, totaling 6 pages, were in a new exhibit labeled as "Exhibit 1", which just happens to contain 31 totals pages (14+ 11+6=31), coincidentally the same number of pages in total indicated on the first sheet in error. The second page was labeled "2 of 14", etc. until "14 of 14" (R.App. 24,25). The second part of the proposed agreement (H103A) was properly labeled "1 of 11" through "11 of 11".

After the hearing granting movant's motion to compel arbitration, 11 days later, the trial court faxed his signed order (App. 7,8) to the parties without a written opinion. It is not known why the trial court delayed so long (11 days). Doing so precluded the petitioner from filing a reconsideration motion.

The case file was apparently held in chambers until at least November 7, 2007. The plaintiff filed its Notice of Appeal to the Virginia Supreme Court with the Clerk of the Fairfax Circuit Court on November 21, 2007. Upon query, one of the associate clerks in the records room indicated to the plaintiff, pursuant to a request to check out the case file for review, that it was unavailable and probably still in chambers, given the recent hearing.

The petitioner notified her employer in various ways, but on November 24, 2007, she submitted several documents to the trial court describing the errors. On December 4, 2007, the petitioner provided a second set of documents to support her first report to the trial court.

From December 24, 2007 through January 8, 2008, the petitioner contacted movant attorney's with a number of "memos for the record" (R.App. 27). Without any confirmation or knowledge, and with what seemed to be a lack of interest in addressing the errors, petitioner formally notified movant of their existence.

The trial court issued a letter on January 21, 2008 notifying the parties of the petitioner's communications, indicating that it had not read the materials (App. 23). The record on appeal was then delivered by the Fairfax Circuit Clerk to the Virginia Supreme Court (VSC) in two sealed envelopes on January 28, 2008.

In its Opposition for Appeal to the VSC submitted on February 21, 2008, without mentioning its errors in the transmitted record, the movant continued to refer to and to rely upon the erroneous evidence in its pleadings (R.App. 34) submitted below.

The petitioner notified the movant's CEO and other top-level executives on August 15, 2008. The movant then, in its Opposition on Appeal dated

August 18, 2008 (App. 46), admitted the errors in a footnote.

The petitioner then filed a petition for writ of mandamus on May 19, 2009 and a follow-up re-hearing, but the VSC rejected both.

Probable intent by the movant, supported by independent evidence, was only suspicioned until on, or about, April 1, 2010 when the petitioner located the *Batchelor* evidence (App. 41-44) showing that the movant either knew, or should have known, that their erroneous evidence submitted on October 9, 2007 to the trial court, when compared to what it had submitted 5 days before on October 4, 2007 to a Maryland Federal District Court, rendered the trial court's order erroneous. The petitioner had not yet notified authorities so she could not inform this Court in her Petition or Supplemental.

Additional verification of probable intent was located on, or about May 16, 2010 in a previously unknown letter between movant attorney's and petitioner's appeal attorney dated August 26, 2008 (R.App. 36).

Therefore, it is requested this Court consider ordering the said trial court order void due to erroneous filings, concealment and other stated reasons.

CONCLUSION

It is clear the movant acted inappropriately which renders void the trial court's order and unenforceable their arbitration clause to the petitioner.

Respectfully submitted,

CRISELL SEGUIN, pro se*
15015 Kamputa Dr.
Centreville, Va. 20120-1450
(703) 851-6174
**Petitioner*

Dated July 15, 2010

REVISED PRAYERS

Petitioner prays that this Court;

1. Reverse the trial court's order and remand her to a jury trial on the merits, with amendments, for her defamation suit and any other claims identified.

2. Order the arbitration clause of the employer's at will contract unenforceable as to the petitioner, and that the employer be ordered not to attempt to forcefully apply said, or other similar, clause against her again.

3. Order that all petitioner's fees and costs since July 16, 2007 be repaid.

4. Order a stay from the July 16, 2007 motion date forward until return to the trial court for proceedings.

CERTIFICATE OF COMPLIANCE

The foregoing petition for rehearing is presented in good faith and not for the purpose of delay. This Petition is restricted to the grounds set out in Rule 44.2.

CRISELL SEGUIN, pro se

AUTHORIZED DOCUMENTS ARE PUBLISHED ONLINE ONLY. VERIFY ANY COPY AGAINST THE ONLINE SYSTEM BEFORE USE.

Arbitration Procedures (Continued)

Any time you spend preparing for or attending the hearing in connection with the arbitration of any claim is not work time and will not be paid for by the Company. However, if you are subpoenaed to appear as a witness in an arbitration where you are not a party, the normal Company rules applicable to paying for time spent as a witness will apply.

Authority Of The Arbitrator

To the fullest extent permitted by law, all matters of procedure, arbitrability of the issues, the location, and the conduct of the hearing will be determined by the arbitrator, consistent with The Arbitration Rules; provided, however, that, unless you and the Company agree otherwise, the arbitration will be held in the city nearest to the work location where you are or were principally assigned.

The arbitrator will have authority to decide any disputes regarding discovery. If any party seeks to notice

more than three depositions in connection with a claim, the parties shall first hold a joint meeting with the arbitrator to discuss discovery issues, limitations, and scheduling.

The arbitrator may bifurcate the proceedings in order to rule first on whether any claim presented is arbitrable. The arbitrator may also bifurcate issues of liability from issues of damages or remedy.

The arbitrator may award any remedy that could be awarded by a court, including, for example, back pay, compensatory damages, preliminary and/or permanent injunctive relief, and/or punitive damages.

Decision of the Arbitrator

The arbitrator shall issue a written opinion stating the essential findings and conclusions upon which the arbitrator's award is based. The arbitrator shall serve the award by mail on you and the Company. The parties will jointly request that the arbitrator issue this written opinion within thirty calendar days after the close of the hearing or briefing.

The decision of the arbitrator will be final and binding upon you and the Company. A reviewing court may only confirm, correct, or vacate an award in

accordance with the standards set forth in the Federal Arbitration Act, 9 U.S.C. §§ 1-16, or applicable state law.

* * *

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

CRISELL SEGUIN,	:	
Plaintiff,	:	
-vs-	:	CL NO. 2007-5843
NORTHROP GRUMMAN SYSTEMS CORP., ET AL,	:	
Defendants.	:	

Circuit Courtroom 5C
Fairfax County Courthouse
Fairfax, Virginia

Friday, October 26, 2007

* * *

[PAGE 12] It's a question of her action.

MR. GOULD: Well, I understand she continued to work, but we have –

THE COURT: Not only did she continue to work, but she even used the arbitration procedure, the procedure set out in the new plan.

MR. GOULD: Let me –

THE COURT: She even questioned them at one point, I think.

MR. GOULD: I didn't hear you, sir.

THE COURT: She even questioned then at one point, so I mean, she's operating as an employee

and they said, "If you want to continue to work here, you are going to accept these conditions," and she continues to work there, and then even utilized the grievance procedure set up.

MR. GOULD: That is analogous to a contract of adhesion. She was in a situation –

THE COURT: Oh, no. Give me a case in Virginia that relies upon a contract of adhesion.

MR. GOULD: Well, let me give you the facts. Let me give you the facts.

THE COURT: Give me a case where the Virginia

* * *

[PAGE 16] THE COURT: Exactly. There is an existing written employment contract that they are changing the terms of. They cannot unilaterally change a written contract. That's what they did here. This is an employment at will.

MR. GOULD: That's still a contract. I've cited –

THE COURT: No, no, no, no.

MR. GOULD: Of course it's a contract, Judge.

THE COURT: Well, it is, to some extent, but it's not in that same sense a written contract, Mr. Gould.

MR. GOULD: The terms of the contract, of the employee at will contract, is "I will work for you

and get paid X and you may terminate me at any time."

THE COURT: At any time.

MR. GOULD: "And I may leave at any time."

THE COURT: And that's exactly what they are saying in that memo, isn't it?

MR. GOULD: No.

THE COURT: "You can accept these terms or you are terminated." That's what they are saying which they have a right to do.

MR. GOULD: I don't think they have a right to

* * *

[Page 20] CERTIFICATE OF REPORTER

I, LISE M. WARMUTH, a Certified Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings which I thereafter reduced to typewriting; that the foregoing is a true record of said proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

/s/ Lise M. Warmuth
LISE M. WARMUTH, CVR
Certified Verbatim Reporter

VIRGINIA:

IN THE CIRCUIT COURT
FOR FAIRFAX COUNTY

CRISELL SEGUIN,	)	
Plaintiff,	)	
v.	)	**CL-2007-5843**
NORTHROP GRUMMAN SYSTEMS CORPORATION, ET AL.,	)	
Defendants.	)	

PLAINTIFF'S OPPOSITION TO DEMURRER OR, IN THE ALTERNATIVE, MOTION TO COMPEL ARBITRATION

(Filed Oct. 18, 2007)

Plaintiff, by counsel, hereby files her opposition to defendants' demurrer or, in the alternative, motion to compel arbitration.

I. The Motion to Compel Arbitration.

A. Defendants waived their right to contest this Court's jurisdiction.

By filing their demurrer and separate motion to crave oyer, defendants submitted to this Court's jurisdiction and waived their objection to having the Court rather than an arbitrator, adjudicate plaintiff's claim. *Franklin v. Commonwealth*, 27 Va. App. 136, 497

S.E.2d 881 (Va. App. 1998) (Court held " . . . that by making a request for affirmative relief husband entered a

* * *

B. Based on contract law principles, no enforceable arbitration agreement exists.

It is settled that principles of contract law or, in an appropriate case, principles of contract modification, determine whether a duty to arbitrate exists. *Phillips v. Mazyck*, 2007 Va. LEXIS 53, *8 (Va. S. Ct. 2007); *Lawson & Frank, P.C. v. Bettius, et al.*, 66 Va. Cir. 93 (Arlington Cir. Ct. 2004). (A party seeking to impose arbitration based on principles of contract modification is required to prove there was a modification by "clear, unequivocal, and convincing evidence." *Id.*, *98, citing *Reid v. Boyle*, 259 Va. 356, 369-70, 527 S.E.2d 137, 144-45 (2000)). Therefore before defendants can rely on Code 8.01-581.01 they must prove that a contract to arbitrate exists.

Plaintiff's contact of employment with Northrop Grumman ("NG"), which was at will, was silent on the issue of whether disputes would be subject to binding arbitration. See Declaration of Crisell Seguin.[1] The intent of the parties is central to the question of whether the parties agreed to submit to binding arbitration. A party may not be held to have

---

[1] [Footnote Omitted In Printing]

consented to a proposal to arbitrate by her silence; put differently, a party's intent to be bound by the terms of a proposed contract may not be inferred from her failure to reject the proposal. *Phillips v. Mazyck*, 2007 Va. LEXIS 53,

* * *

DECLARATION OF CRISELL SEGUIN

1. My name is Crisell Seguin. I make this Declaration based on my personal knowledge of the facts stated herein.

2. When I was first employed by Northrop Grumman there was no discussion or any mention at all of any Dispute Resolution Process ("DRP") or any process that would involve me submitting to binding arbitration in the event of a dispute with the company.

3. I did not learn of the DRP until sometime in 2007, after I began having problems with my immediate supervisor, Mr. Gage.

4. The problems I began having, which amounted to harassment, aggravated my high blood pressure to the point that my medication was increased by my physician and also caused me serious stress. It was important to my health that I try to resolve the problems as quickly as possible.

5. I tried to resolve the problems by communicating with Mr. Gage, but was unable to do so.

6. Once it was clear that I would not be able to resolve the harassment problems by talking with Mr. Gage, the only option I saw available under

the company's policies was to use the informal procedure under what it calls its DRP. I never communicated to the company that I was willing to submit to binding arbitration and I never intended to submit to binding arbitration.

7. I love and need my job and did not want to leave the company because of the problems I was having. The only option I saw to try to straighten matters out was to work through the company's Human Resources people and use the informal procedure available under the DRP.

8. The company did not offer me or, to my knowledge, any other employee any consideration to accept the binding arbitration proposal.

I declare under penalty of perjury that the foregoing is true and correct.

10/15/07 /s/ Crisell Seguin
Date Crisell Seguin

SUPREME COURT OF VIRGINIA

RECORD NO. 080217

CRISELL SEGUIN

Appellant,

v.

NORTHROP GRUMMAN
SYSTEMS CORPORATION
and
JOHN C. GAGE

Appellees.

PETITION FOR APPEAL

William H. Shewmake, VSB #25409
Shewmake & Baronian, P.C.
5413 Patterson Avenue, Suite 101
P. O. Box 17675
Richmond, VA 23226
Telephone: (804) 282-8800
Facsimile: (804) 285-4542

Counsel for Appellant

* * *

Grumman's dispute resolution policies and procedures, including a provision that required all disputes relating to their employment be arbitrated. (*Id.*). Northrop

Grumman did not request that the employees sign the agreement or taken any action acknowledging their assent. Northrop Grumman simply stated that continued employment would signify agreement as to the arbitration requirement *id.*). At no time did Ms. Seguin ever agree, verbally or in writing, to be bound by the arbitration provisions.

* * *

VIRGINIA:

IN THE SUPREME COURT at RICHMOND

In Re: CRISELL SEGUIN, Petitioner	)	**VSC No. 080217**
	)	**Circuit No.**
	)	**CL-2007-5843**

PETITION for WRIT of MANDAMUS

To the Honorable Chief Justice and the Honorable Justices of the Supreme Court of Virginia;

COMES NOW the petitioner, and hereby petitions this Court for a Writ of Mandamus directed to the Honorable Dennis J. Smith, judge of the Fairfax County Virginia Circuit Court, ordering him to stay his order compelling arbitration dated October 26, 2007 pursuant to Virginia Code § 8.01-581.02(A) & (D) and to forthwith convene a trial-by-jury pursuant to § 8.01-336(A) and the Constitution of Virginia, Article I, Section 11, in the above styled matter to determine whether there existed an arbitration agreement between the parties prior to May 17, 2007. Upon said Jury

* * *

NATURE OF THE CASE

Crisell Seguin, the Petitioner, filed a defamation suit against her employer (Northrop Grumman Systems Corporation) and her boss (John C. Gage), collectively referred to in this petition as "employer" due to alleged false statements made in her 2006 annual performance review. Shortly thereafter her

employer filed a motion to compel arbitration insisting that it had an agreement with the petitioner to resolve all employment related disputes by arbitration instead of in a court of law. The petitioner denies she ever agreed to any supposed contract. At a hearing regarding the motion to compel, the trial court ordered arbitration without a jury trial even though material facts were in dispute and the petitioner had demanded a trial-by-jury in her original complaint, but did not honor the petitioner's request for a stay. Subsequently, the petitioner appealed to this Court requesting relief. Additional evidence became available during the appeal

* * *

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Morgan Lewis
COUNSELORS AT LAW

Karen E. Gray
202.739.5334
kgray@morganlewis.com

October 25, 2007

BY HAND DELIVERY

Chief Judge Dennis Smith
Judge's Chambers – 5th Floor
Circuit Court of Fairfax County, Virginia
Jennings Building Judicial Center
4110 Chain Bridge Road
Fairfax, VA 22030

Re: Seguin v. Northrop Grumman Systems Corporation, et al.: Civil Action No. CL-2007-5843

Dear Chief Judge Smith:

Enclosed please find a courtesy copy of documents filed today in the above-referenced case:

- Defendants' Reply in Further Support of Their Demurrer or, in the Alternative, Motion to Compel Arbitration with attached exhibits.
- Defendants' Reply in Further Support of Their Motion to Crave Oyer with attached exhibit.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,

/s/ Karen E. Gray
Karen E. Gray

Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October 2007, a true and correct copy of the foregoing Defendants' Reply to Plaintiff's Opposition to Demurrer or, in the Alternative, Motion to Compel Arbitration was sent via hand delivery to:

Jack L. Gould, Esq.
10615 Judicial Drive, Suite 102
Fairfax, VA 22030
Attorney for Plaintiff

/s/ Karen E. Gray
Karen E. Gray

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October 2007, a true and correct copy of the foregoing Defendants' Reply in Further Support of Their Motion to Crave Oyer and Attached Exhibit was sent via hand delivery to:

Jack L. Gould, Esq.
10615 Judicial Drive, Suite 102
Fairfax, VA 22030
Attorney for Plaintiff

/s/ Karen E. Gray
Karen E. Gray

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

CRISELL SEGUIN, Plaintiff, v. NORTHROP GRUMMAN SYSTEMS CORPORATION, *et al.*, Defendants.	CL-2007-5843

AMENDED DECLARATION OF PATRICIA WOLF

I, Patricia Wolf, having personal knowledge of the facts set forth below, do hereby declare:

1. I hold the position of Director of Compliance and Employee Relations at Northrop Grumman Information Technology ("Northrop Grumman" or "the Company") and have held this position since January 2002.

2. Northrop Gumman Corporation's Dispute Resolution Process ("DRP") was distributed to all Company employees via electronic mail on February 9, 2004, and again on May 10, 2004.

3. The DRP was amended on September 15, 2006. On September 29, 2006, the amended version was distributed to Crisell Seguin and all other Company employees via electronic mail and first class U.S. mail. At all times while it has been in effect, it

has also been posted on the Northrop Grumman intranet website.

4. Tab 1 of Defendants' Memorandum of Points and Authorities in Support of Their Demurrer, or in the Alternative, Motion to Compel Arbitration contains a true and correct copy of the documents relating to the DRP that were distributed to Crisell via electronic and first class U.S. mail, consisting of Corporate Procedure No. H103 (Dispute Resolution Process), Corporate Procedure H103A (Employee Mediation/Binding Arbitration Program), and a cover memorandum from Ian Ziskin, Chief Human Resources and Administrative Officer.

5. Tab 1 of Defendants' Reply in Further Support of their Demurrer or, in the Alternative, Motion to Compel Arbitration contains a true and correct copy of the relevant portion of the Proof of Mailing evidencing the fact that the revised DRP was mailed to Ms. Seguin's home address on September 29, 2006. Home addresses of the other individuals listed have been redacted. This document is retained in the Company's records in the ordinary course of business.

6. Tab 2 of Defendants' Reply in Further Support of their Demurrer or, in the Alternative, Motion to Compel Arbitration contains a true and correct copy of Northrop Grumman's Delivery Receipt Tracking System evidencing the fact that Ms. Seguin received an electronic copy of the updated Dispute Resolution Process (Company Announcement) on

September 29, 2006 at 8:43 PM. This document is retained in the Company's records in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 25, 2007 /s/ Patricia A. Wolf
Patricia Wolf

NORTHROP GRUMMAN

NOTICE OF APPEAL TO THE MANAGEMENT APPEALS COMMITTEE
Form C-605 (2-07)*

To be filed with Human Resources to initiate an appeal to the Management Appeals Committee.	DATE

NAME	DEPARTMENT
TITLE	
SUPERVISOR NAME	DATE OF ADMINISTRATIVE OFFICER REVIEW.
WHAT EMPLOYMENT ACTION DO YOU FEEL VIOLATED COMPANY POLICY OR WHAT UNLAWFUL CONDUCT DO YOU CLAIM OCCURRED?	
OUTCOME OF ADMINISTRATIVE OFFICER REVIEW	
REASON FOR APPEAL	
REQUESTED REMEDY	

SIGNATURE	DATE
RECEIVED BY HUMAN RESOURCES	DATE RECEIVED

* * *

recover damages for defamation allegedly committed by Defendants in the course and scope of her employment. This claim, however, is subject to a mandatory, binding arbitration agreement: as set forth in Northrop Grumman's Dispute Resolution Process ("DRP"). The DRP and Plaintiff's efforts to invoke it prior to filing her lawsuit are therefore material and necessary to her claims. Plaintiff should not be permitted to avoid this Court's consideration of the arbitrability of her claims: simply because she chose not to disclose the DRP's applicability in her Complaint. Accordingly, Defendants request that the Court treat the DRP, Plaintiff's written efforts to invoke it, and evidence of the DRP's delivery as though they were a part of Plaintiff's Complaint.[1]

WHEREFORE Defendants respectfully request that their Motion to Crave Oyer be granted and that the Court consider the Dispute Resolution Process and electronic mail messages from Plaintiff attached as exhibits to Defendants' Memorandum of Points and Authorities in Support of Their Demurrer or, in the Alternative, Motion to Compel Arbitration.

---

[1] Defendants' inadvertently omitted forms C-606 and C-607 to Corporate Procedure H103A (Employee Mediation/Binding Arbitration Program) in Exhibit 1 to Defendants' Memorandum of Points and Authorities in Support of their Demurrer or, in the Alternative, Motion to Compel Arbitration and the Motion to Crave Oyer. Defendants attach the full DRP including all Forms to this Reply as Exhibit 1.

Defendants further request this Court consider the Amended Declaration of Patricia Wolf, Proof of Mailing, and Northrop Grumman's Delivery Receipts Tracking System for September 29, 2006 attached as exhibits to Defendants' Reply in Further Support of Their Demurrer or, in the Alternative, Motion to Compel Arbitration.

* * *

---

* * *

AUTHORIZED DOCUMENTS ARE PUBLISHED ONLINE ONLY. VERIFY ANY COPY AGAINST THE ONLINE SYSTEM BEFORE USE.

Overview, Continued

Forms The following Corporate forms may be used in the Dispute Resolution Process:

- *Form C-604,* Formal Request for Administrative Officer Review
- *Form C-605,* Notice of Appeal to the Management Appeals Committee
- *Form C-606,* Request For Mediation
- *Form C-607,* Demand For Arbitration

General Northrop Grumman values employees as its most important resource and places a high priority on ensuring fair and consistent treatment (see *CP No. H1,* Human Resources). The company is committed to creating an environment of mutual trust and professionalism where problems can be fairly resolved through an interactive process that encourages better communication at all levels.

Employees are encouraged to work with their management to achieve resolution

concerning any problems impacting the employee's work. Employees needing additional assistance should contact their Human Resources representative for advice and assistance regarding any work-related issues.

Continued on next page

* * *

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Arbitration

In This Section

This section provides a general overview of the arbitration process.

Process

The table below provides a general overview of the arbitration procedure. Refer to *CO No. H103A* for more details.

Responsibility/ Step	Action
Employee; Law Department 1	Deliver a Demand For Arbitration to the other party pursuant

	to the procedures set forth in *CO No. H103A*. *Note*: *Form C-607*, Demand for Arbitration, may be used for this purpose.
2	Choose an arbitrator pursuant to the procedures set forth in *CO No. H103A*.
3	Arbitrate the claim pursuant to the procedures set forth in *CO No. H103A*.

Issued by: Corporate Command Media
(90/132/CC)

Second Follow-up to MEMORANDUM FOR THE RECORD

Wednesday, January 2, 2008

Karen E. Gray, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-3000, (202) 739-3001 fax,
kgray@morganlewis.com

Subject: Request for Information Regarding Your October 9 and 25, 2007 Pleadings Accuracy, etc.

RE: Fairfax County Circuit Court Case No. CL-2007-5843

via prepaid USPS certified mail with return receipt and fax, with a fax copy to James J. Kelley, Esq. of the same law firm

Dear Karen;

Since I have not yet received the information that I requested last Wednesday of you and Mr. Kelley, I feel that it is now critical to begin addressing the above subject. In that vein, I provide the following. If you see anything differently, please let me know immediately, otherwise I must assume that you agree.

I believe, according to your filings:

#1 – Defendant subject documents originally filed on October 9, 2007 and supplemented on October 25, 2007 with the Fairfax County Clerk of the Circuit Court, in the above referenced case, relative to a

Motion Hearing held on October 26, 2007, apparently contained material errors.

#2 – All of the subject documents (4 in total) that you caused to be filed, were signed and certified by you as Defendants Counsel. You copied the Judge on two, and the Plaintiffs Counsel on all four.

#3 – All of the Declarations and Amended Declarations within the subject filed documents were signed and dated under penalty of perjury by one, and the same, Defendant Company employee.

#4 – In both of the original documents filed on October 9, 2007, an inconsistency exists between what motion argument refers to as the location of the DRP (Ex. 1) verses [sic] what ALL of the declarations refer to as the DRP's location (Tab 1), which may have possibly caused some confusion.

#5 – In your footnote of the October 25, 2007 Motion to Crave Oyer you indicate that the DRP is located in "Exhibit 1" of the original documents filed on October 9, 2007. It appears that this tag (Exhibit 1) is synonymous with the tags "Ex. 1" and "Tab 1". It also appears that all 3 tags are intended to point to the same relative location which is the first included attachment to both of your original documents filed on October 9, 2007, representing the official DRP, located immediately following your certification signature.

#6 – The Defendant company claims it mailed the same DRP to all employees that was distributed to the Plaintiff on September 29, 2006, which would

include the employee who signed all of the Declarations and Amended Declarations in this case.

#7 – The Defendant company claims it emailed the same DRP to all employees that was distributed to the Plaintiff on September 29, 2006, which would include the employee who signed all of the Declarations and Amended Declarations in this case.

#8 – An employee is not paid for time spent during, or preparing for, the arbitration process even if forced to arbitrate by the company, according to H103A, regardless of who is found at fault during the arbitration proceeding, unless subpoenaed.

#9 – An ex parte letter, and two flings, which included in their titles; "in Further Support of", were hand delivered to the Hearing Judge late in the afternoon of October 25, 2007 (the day before the hearing), one of which included an Amended Declaration, apparently still referencing the unauthorized H103 cover page containing "1 of 31".

#10 – All of the Terms & Conditions are not stated in the DRP, vis-á-vis page 3 of H103A states; "any violation of applicable federal, state, or local law, . . . ". The term "applicable" is not well defined even though that word is a significant and contract defining Term.

#11 – Under circumstances described in H103A, the company is required to arbitrate all issues demanded by employees.

#12 – There exists an uncorrected, unauthorized cover page designated as page "1 of 31" in multiple

copies of the Dispute Resolution Process (H103) filed by the Defendants.

#13 – The original Defendant Declaration contained a date of "September 29, 2006" in Paragraph 4 that was absent in the Amended Declaration, which contains no explanation why it was removed.

#14 – The Plaintiffs designation was changed from "Ms. Seguin" to "Crisell" in Paragraph 4 in the Amended Declaration.

#15 – An employee automatically invokes the DRP, according to the chart on page 4 of H103, by making a complaint to HR, whether they intend to invoke that process or not.

#16 – The C-605 DRP form, in all of your filings, contains a date of "2-07" which was more than four months after the September 29, 2006 DRP distribution date.

#17 – H103A requires employees to arbitrate crimes against them by other employees, related to work circumstances, due to the lack of specificity in the DRP.

* * *

Request for clarifications, and other related items:

#101 – What exactly constitutes the complete and total Defendant company's arbitration agreement?

With your corrections and some of the issues presented here, it is now unclear just exactly what that agreement is, and just exactly what it's contents are.

#102 – Have you verified the contents of both the mail and email DRP with your corrected DRP in Exhibit 1?

#103 – Have you determined if more than one DRP was distributed per mode, or if either may have had errors in them?

#104 – Does the Defendant company provide formal DRP training for employees?

#105 – Corporate Procedure H103 entitled "Dispute Resolution Process", like any other of the Defendant company's procedures, requires employee compliance, by dictate.

#106 – Corporate Procedure H103A is a Program by title but it is categorized as a Corporate Procedure, which insinuates that its compliance is required with, or without, a valid and enforceable contract.

#107 – You stated in a phone message that you left for me that you did not know what I was referring to regarding the accuracy of your subject filings implying that the Defendant Company had not yet informed you, as of December 28, 2007, of the apparent errors which still exist in your filed court documents, which you apparently had also failed to identify.

#108 – Two documents in the Defendant's filings, containing multiple apparent errors, were transmitted on October 9, 2007 by electronic mail, apparently from the Washington, D.C. law office of the Defendant's Counsel, to the Plaintiff's Counsel whose principal office is in Fairfax, Virginia.

#109 – On October 26, 2007 you signed an ORDER which stated, in part; "The Court finding that no wrongdoing was committed by any party by filing any documents . . . ", indicating that you had both "Seen and Agreed" as "Counsel for Defendant(s)" with that order.

#110 – There is no record in the October 26, 2007 hearing transcript showing that "wrongdoing" was discussed.

#111 – The company's public web reporting system (OpenLine®) is managed and administered by HR. By using it, an employee may file a complaint which can eventually lead to arbitration.

* * *

Much time has already passed, so I hope to be hearing from you very soon, one way or the other.

/s/ Crisell Seguin, Pro Se
Crisell Seguin, pro se
15015 Kamputa Dr.
Centreville, Va. 20120-1450
(703) 851-6174, (703) 631-1253 fax,
email: seguincr@verizon.net

IN THE SUPREME COURT OF VIRGINIA

Case No. 080217

Crisell Seguin,

Plaintiff-,

v.

Northrop Grumman Systems Corporation, et al.,

Defendants-Appellees

NORTHROP GRUMMAN SYSTEMS CORPORATION AND JOHN C. GAGE'S REVISED OPPOSITION TO CRISELL SEGUIN'S PETITION FOR APPEAL

James J. Kelley (VA Bar No. 13869)
Karen E. Gray (VA Bar No. 47747)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 739-3000
(202) 739-3001 (Fax)

Attorneys for Northrop Grumman Systems Corporation and John C. Gage

* * *

30, 2004, as amended on September 15, 2006. Except in very limited circumstances not applicable here, the DRP requires Northrop Grumman employees, as well as the Company, to resolve all employment-related disputes through mandatory binding arbitration. (Defs.' Mem., Ex. 1).[1]

Northrop Grumman mailed Ms. Seguin the DRP on September 29, 2006. (*See* Defs.' Reply, Exs. 1 and 3)[2]. Ms. Seguin also received notice of the DRP by electronic mail on February 9, 2004, May 10, 2004, and September 29, 2006. (*See* Defs.' Reply, Exs. 2 and 3 ¶ 6). In addition, since its inception in 2004, the DRP has been available to all employees on Northrop Grumman's intranet website. (*See* Defs.' Reply, at 3). Ms. Seguin admits that she was aware of the DRP in 2007 prior to filing her lawsuit. (*See* Pl. Opp. at 3, Decl. of Crisell Seguin ¶ 3; Defs.' Mem., Ex. 4).[3]

Northrop Grumman's DRP states, "[b]y accepting or continuing employment on or after 1 November 2006, all covered employees agree to submit any

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[1] Defendants Northrop Grumman Systems Corporation and John C. Gage's Memorandum of Points and Authorities in Support of Their Demurrer or in the Alternative, Motion to Compel Arbitration (hereinafter "Defs.' Mem.").

[2] Defendants' Reply in Further Support of Their Demurrer, in the Alternative, Motion to Compel Arbitration (hereinafter "Defs.' Reply").

[3] Plaintiff's Opposition to Demurrer or, in the Alternative, Motion to Compel Arbitration (hereinafter "Pl. Opp.").

covered disputes to binding arbitration, rather than to have such disputes heard by a court or jury." (Defs.' Mem., Ex. 1 at 3).[4] Ms. Seguin continued her employment with Northrop Grumman after November 1, 2006, and after she was aware of the DRP in 2007. (*See* Compl. ¶¶ 1, 6; Petition for Appeal at 5). Indeed, Ms. Seguin remains employed by Northrop Grumman.

In a memorandum to Northrop Grumman Human Resources dated March 6, 2007, Ms Seguin confirmed her awareness of the DRP. In that memorandum, she specifically asked "[m]ay

* * *

[4] Similar language appears in the September 29, 2006 cover letter. (*See* Defs.' Mem" Ex. 1, at 1; Petition for Appeal, attachment).

LR
LECLAIRRYAN

Date: May 17, 2010	**Fax Number**	**Phone Number**
To: Crisell Seguin	703-631-1253	

Number of pages including cover sheet:

		Fax Number	**Phone Number**
From:	Alicia B. Higgs	804.783.2294	804.916.7137
Emp. No.		**Client/Matter No.**	

Remarks: Attached is a fax dated August 26, 2008.

NOTE: The information contained in this facsimile message may be attorney privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the address below via the United States Postal Service. Thank you.

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August 26, 2008

VIA FACSIMILE AND MAIL

William H. Shewmake
LeClairRyan
Riverfront Plaza, East Tower
951 E. Byrd Street
Eighth Floor
Richmond, VA 23219

Re: *Seguin v. Northrop Grumman Systems Corporation., et al.*

Dear Will:

I am writing with regard to an email dated August 16, 2008 that was sent by your client, Crisell Seguin, to the Chief Executive Officer of Northrop Grumman (Dr. Ronald Sugar) and other senior executives regarding alleged misrepresentations to the Supreme Court of Virginia in this litigation. Please be advised that this is not the first time that Ms. Seguin has contacted Company personnel regarding her litigation, and the Company continues to believe that such

communications should he made between counsel. Nevertheless, this letter constitute the Company's response to the August 16th email, which we would request be provided directly to her. In short, there have been no misrepresentations, and the Company is committed to insuring that no false, material information is knowingly submitted in any legal proceeding.

First, Ms. Seguin believes that the copy of the Dispute Resolution Process (DRP) that was filed by the Company with the court is different from the copy that she received from the Company in September 2006. In particular, she has pointed out that the Corporate Procedure H103 that was submitted to the court has "Page 1 of 31" on the first page, while the Corporate Procedure H103 that she received has "Page 1 of 14" on the first page. She should be assured that this was only a pagination error that occurred when the document was taken from Command Media and converted to.pdf format The substance of the text of H103 that was submitted to the court was identical to the text that she received. Regardless, we noted the pagination error in our Virginia Supreme Court brief, even though the pagination issue is not relevant to the issues that the court is deciding.

Second, it appears that she is upset that a copy of Form C-605 was submitted to the court even though she did not receive C-605 (which has a February 2007 date on it) in September 2006. The Company included C 605 and the other forms referenced in H-103 so

that the court would have a complete copy of the applicable DRP, and it does not contend that she received C-605 in September 2006. To avoid any misunderstanding, we have made clear in our court filing that, while she received H-103A and H-103A, she did not receive the referenced forms in September 2006, Again, the inclusion of C-605 is irrelevant to the issues that the Virginia Supreme Court is deciding.

I trust that this addresses the issues raised in her email. Please do not hesitate to contact me if you wish to discuss this matter further.

Sincerely,

/s/ Karen E. Gray
Karen E. Gray

Kagan Confirmation Hearing Transcript

Compiled July 3, 2010 From Files
Made Available by The Washington Post

June 28, 29, and 30, 2010 Transcript Text

* * *

FEINGOLD: All right. I want to talk with you now about the issue of forced arbitration, which I've been working on for about a decade. More and more powerful economic interests are forcing consumers and employees to bring their disputes not to the courts, but to a parallel legal system where the rule of law barely applies and where the outcome I think is stacked against them.

A century ago, Congress passed the Federal Arbitration Act to allow parties who wanted to take their disputes to arbitration to enforce the results of the arbitration in court. In the last several decades, however, the Supreme Court has twisted this law to allow banks and mortgage companies, health care providers, big agribusinesses and others to enforce so-called "take it or leave it" contracts that force people to use arbitration even if they don't want to.

I think that's wrong and Congress needs to change it. And just this past week in the Rent-A-Center case, the court held that in most cases where a claim is made that enforcement of an arbitration clause would be unconscionable, it would be the arbitrator – the arbitrator – who gets to rule on that issue.

Do you understand why the Supreme Court's decisions in favor of powerful interests who want to

force consumers and employees into arbitration against their will are so troubling to those who believe that our courts must continue to be available to enforce consumer protection, employment discrimination, and other laws written to protect the powerless from misconduct by the powerful?

KAGAN: Senator Feingold, I have not had an opportunity to read that case. It was not one that the solicitor general's office participated in. And I don't have a view of it or much knowledge about it.

I think that in this – in that case, the Supreme Court was interpreting a congressional statute, and this is another of the areas where Congress does indeed get to state the rules. So to the extent Congress thinks the court got it wrong in that case or in any other regarding arbitration, I think it's appropriate, and the court would and should respect what Congress does.

* * *

FRANKEN: Thank you, Mr. Chairman.

General Kagan, I really liked something you said yesterday in your conversation with Senator Kyl. You said that "one of the glorious things about courts is they provide a level playing field in all circumstances, and that we need to make sure that every single person gets the opportunity to come before the court and gets the opportunity to make his best case and gets a fair shake."

I want to discuss something that is denying more and more working Americans that precious day in

court – that fair shake, and that's mandatory arbitration. Now, arbitration has its place. I'm talking about mandatory arbitration.

Chances are if you have a cell phone or a credit card or if you work, you're likely to have signed a contract with a mandatory arbitration clause. These clauses basically say if we violate your fights, you can't take us to court. You have to take it to an arbitrator. But then the fine print essentially says an arbitrator that we pay who depends on us for work and who makes decisions in secret.

So a lot of people are denying their opportunity to come before the court. Unfortunately, we've seen a series of decisions from the Supreme Court that have made it even harder for people to get that fair shake, as you put it.

In 2001, in a case called Circuit City, the court was asked to decide whether workers' employment – employment contracts could be subject to mandatory arbitration. This really should have been a no-brainer because the Federal Arbitration Act of 1925, the law that says which arbitration agreements should be enforced, specifically exempts, quote, "contracts of employment of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce."

Organized labor had asked for this specific language to be included to make sure the act would not apply to workers' employment contracts. In fact, then-Commerce Secretary Herbert Hoover said

during a Senate hearing, quote, "If the objection appears to the inclusion of workers' contracts in the law's scheme, it might well be amended by stating that nothing herein contained shall apply to the contracts of employment of seamen, railroad employees or any other class of workers engaged in interstate commerce."

Secretary Hoover was saying that if Congress wanted to make clear that the Federal Arbitration Act did not apply to employment contracts, Congress should put this language in the statute. So Congress put the language in the statute. But when Justice Kennedy wrote the majority opinion in Circuit City, he ignored the history. He wrote, and I quote, "We need not assess the legislative history of the exclusion provision." Let me repeat that: "We need not assess the legislative history of the exclusion provision."

And based on a strained reading of the law, he decided that the exception only applied to workers in the transportation business, not any class of workers. This means that instead of all workers getting their day in court in Congress, like Congress clearly intended, only transportation workers would get it, and that excludes the vast majority of American workers.

General Kagan, I really disagree with this case and the way the court ignored Congress' intent. That's why I was glad to hear your response to one of Senator Schumer's questions about how the court should interpret statutes. You said that among other

things, quote, "I think a judge should look to the history of the statute in order to determine Congress' will."

General Kagan, we spend a he lot of time in hearings and on the floor debating legislation. How much weight do you think a judge should give to the deliberations of Congress and the reasons why we passed a law in the first place?

KAGAN: Well, Senator Franken, the most important thing in interpreting any statute – in fact, the only thing that matters in interpreting any statute – is Congress' intent. Congress gets to make the laws under Article One of the Constitution. And what the court should be doing in applying those laws is trying to figure out what Congress meant and how Congress wanted the laws to be applied. That is the only thing that the court should be doing.

Now, sometimes that can be a difficult task. New situations come up. The statutory language – it's not clear how the statutory language applies to those new situations, or sometimes Congress might simply not have thought of particular situations. Language is by necessity inexact. And so there are going to be cases which . . .

FRANKEN: Do you agree with Justice Kennedy, we need not assess the legislative history of something?

KAGAN: Well, I would – I would say this. I would say where the text is clear, the court should

go with the text. Where the text clearly covers some situation, the court should do that. The court should not rewrite the law.

FRANKEN: But shouldn't the court assess that – make an assessment there?

KAGAN: Well, I think if the text is clear, Congress should not – the court should not rewrite the law. But where the text is ambiguous, which often happens . . .

FRANKEN: And wouldn't you have to assess whether it's ambiguous?

KAGAN: Yes. I mean, the first step is . . .

FRANKEN: So what Justice Kennedy said doesn't stand up to that, does it?

Let me – let me move on on that. We in Congress, we want to make sure, all of us, that our intentions are clear so that 75 years from now the Supreme Court doesn't just ignore the purpose behind the laws we are passing. How can we do that? How do we do that? How do we do that? How do we make it clear to future justices?

KAGAN: Well, the courts surely would be helped if Congress spoke as precisely and exactly and as comprehensively as it could in all situations.

KAGAN: You know, there – there are some instances where the – the court just has legitimate difficulty trying to figure out what Congress intended and where judges, all of whom agree that what they

should be doing is doing what Congress intended, have difficulty determining that or disagree about what that means.

And – and certainly to the extent that Congress can make its intentions clear in legislation and can specifically spell out how it intends for the law to operate, Congress ought to do so. And, of course, you know, to the extent that the court gets something wrong with respect to a statute, and this has happened, you know, many times in – in recent years and in prior years, as well – to the – to the extent that the court gets something wrong, of course Congress can come back and change it, and make clear that the court got it wrong, and – and also use it as an opportunity even to make clear its intentions with respect to a general area of law.

FRANKEN: OK. It's hard to do 78 years from now, but we'll try.

Circuit City was a Rehnquist court decision. Just last week, the Roberts court did Circuit City one better in helping employers keep their workers out of court and into arbitration. It happened in a case called Rent-A-Center v. Jackson, which Senator Feingold noted yesterday.

Rent-A-Center had 21,000 workers and hundreds of millions of dollars in annual profits. It also forces its workers to sign a mandatory arbitration agreement as a condition of employment.

Antonio Jackson, an African-American account manager in Nevada, had been working for Rent-A-Center for years, but he was frustrated because he watched his company pass him over for promotions again and again. Instead, they promoted workers who had less experience and who weren't black.

Although Jackson signed an employment contract agreeing to arbitrate all employment claims, this seemed blatantly unfair, and he sued Rent-A-Center. But the company argued that only the arbitrator could decide whether the arbitration clause was unfair. Let me repeat that: Rent-A-Center argued that only the arbitrator could decide whether the arbitration clause was unfair.

Last week, the Roberts court sided with Rent-A-Center. Talk about not getting your day in court. Now you can't get your day in court to get your day in court.

Now, General Kagan, I know I probably can't ask you about whether you think this case – well, I can ask you, but you won't answer – whether this case was correctly decided, but I would like to ask, do you still agree with what you said yesterday to Senator Kyl, that one of the glorious things about courts is that they provide a level playing field in all circumstances and that we need to make sure that every single person gets the opportunity to come before the court and gets the opportunity to make his best case and gets a fair shake?

KAGAN: Well, I – I – I do agree with that very strongly, Senator Franken. And if I might, if I might just return to this question of statutory interpretation that you started off with, because I did want to make clear that, when a text is ambiguous, which, you know, frequently happens, which frequently happens, then I think that the job of the courts is to use whatever evidence is at hand to understand Congress's intent, and that includes exploration of Congress's purpose by way of looking at the structure of the statute, by way of looking at the title of the statute, by way of looking at when the statute was enacted, and in what circumstances, and by way of looking at legislative history.

Now, I think courts have to be careful about looking at legislative history and make sure that what they're looking to is – is reliable, but courts should not at all exclude signs of congressional intent and should – should – should really search hard for congressional intent when the text of the statute itself is unclear.

FRANKEN: Good. Then I think you and I agree that Justice Kennedy may have been in error when he said that – that the court doesn't have to assess the legislative history.

KAGAN: Well, I suspect that – I – I don't know the case very well. I suspect that Justice Kennedy may have meant that he thought that the text was clear and, therefore, the legislative history

was not something that should appropriately be explored, but I'm just guessing on that.

FRANKEN: OK. I think you're guessing wrong.

KAGAN: OK.

(LAUGHTER)

FRANKEN: General Kagan, you've – you've gotten a lot of questions about . . .

KAGAN: It's not the first time in my life.

FRANKEN: And nor the last. We all guess wrong.

* * *

June 30, 2010 18:20 ET
Transcript text is freely distributable.
Questions or comments?
Email steve.schulin@nuclear.com